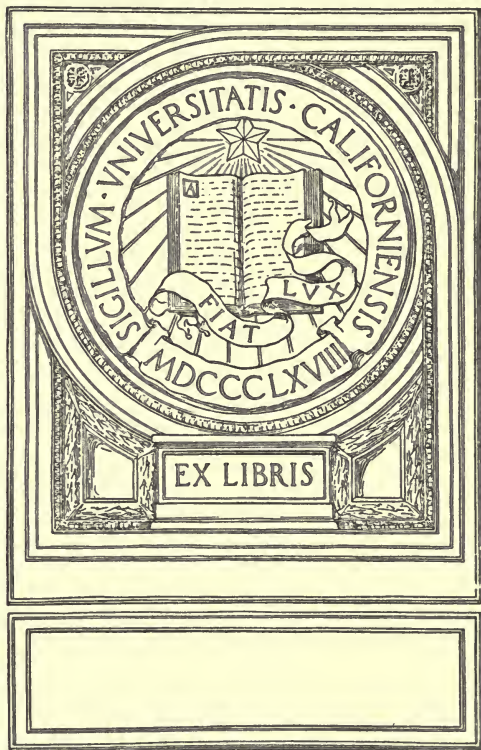


THE  
ESSENTIALS OF ARGUMENTATION

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E. J. MacEWAN

IN MEMORIAM  
Professor R. G. Gettell



Secret









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# THE ESSENTIALS OF ARGUMENTATION

BY

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## PREFACE.

No apology is offered for the appearance of this book. It is an outgrowth of a dozen years' experience with classes in one of the leading Agricultural Colleges of the country. In a school having but a single course of study for the first two years, and differing the last two years in only a few technical subjects, a school essentially scientific, the time for literary work was necessarily limited. That kind of literary training, therefore, had to be provided, which was most helpful to those who, in spite of limited preparation, must go out to become leaders of their class. They had not time to study all the niceties of literary expression. They could, at best, master only the elementary principles of rhetoric and make themselves familiar, in a general way, with the ordinary forms of prose composition. Their work as scientists required proficiency in description. Their work among men would require clear and sound reasoning, and the cogent presentation of what they would want others to accept as true. This was the writer's conviction very soon after beginning his work in this department. Acting on this conviction he made the last two years' work in English composition, — speeches, essays, discussions, — largely argumentative. The effect was a more rapid development

of the students' power of reflection, as well as greater facility and accuracy of expression; and this was taken as a sufficient indication of the value of the work done. Few complaints were heard that the work was dry or unprofitable, or that such "rhetorical exercises" were a bore.

The writer believes that the students with whom this plan was tried, differ little in essential respects from the average college student. In this belief he offers the book to those instructors who wish to do more extended and thorough work in argumentation than is contemplated in the common manuals of rhetoric. He does not claim to present anything new. "The fundamental principles of the art of conviction and persuasion are the same to-day as in the time of Quintilian, but the materials with which the art deals and the weapons in its armory are by no means precisely the same. Pulpit eloquence, for instance, could not be practised until there were pulpits and congregations and a Christian faith. Had Massillon preached in the Coliseum to the Roman Senate, he would probably not have moved his audience either to repentance or to tears. If Antony were to endeavor to-day to rouse his auditors to avenge the assassination of Cæsar, he would need to remember that they had all read 'extras' giving full details of the event. For these reasons formal and systematic works on rhetoric need to be supplemented from time to time by manuals designed to bring forcibly before the mind the practical questions which confront the speaker or debater of to-day."<sup>1</sup>

Nothing more than this is attempted here. The old

<sup>1</sup> *The Nation.*



principles are given according to the writer's own method, and in the order of their application in an elaborate discourse. Examples are taken from any source, whether new or old, affording illustrations which illustrate. It must be remembered that what is trite with the present generation of instructors is new to each generation of students. Passages from Webster and Burke, studied merely for elocutionary exercises and worn threadbare as declamations, may surprise the student when he studies them as illustrations of types of argument, or methods of conviction and persuasion. The same principle has governed the choice of propositions suggested for practice in argumentation or debate. The old and well known are preferred. They are themes for practice in the application of principles, not subjects for public entertainment. Material for their treatment is more easily accessible than material on the transient topics of the day. Every intelligent member of a class can better judge whether the material presented on such topics is fact or fabrication, whether the reasoning is logical or fallacious, and whether or not care has been taken in the choice and arrangement of arguments. The reason for drawing so largely upon scientific works for illustrations is obvious. A large part of modern argumentation is in the field of general science.

The book is not intended especially for forensic orators. The different fields of argumentation are recognized throughout the discussion. Purpose and occasion are constantly kept in view; and it is not forgotten that gaining a victory in debate, compelling acceptance of a truth, arousing to vigorous action, each demands its own method.

The writer's obligations to the works of Whately and of Mill, and to the text-books of Professors Hill, Genung and Hart, are too evident to need mention. Special acknowledgment is due to Messrs. Little, Brown & Company for permission to use entire the speech of Webster at the White murder trial and many passages from Webster's other speeches; to the gentlemen of the Clarendon Press for the use of Burke's *Speech on Conciliation*, edited by E. J. Payne, some passages from Burke's other works, and passages from Fowler's *Inductive Logic*; to Messrs. D. Appleton & Company and the English house of Macmillan & Company for permission to use material from the works of Huxley, Tyndall, Darwin and others; to Messrs. Harper & Brothers for passages from speeches in Goodrich's *British Eloquence*, and quotations from Professor Hill's *Principles of Rhetoric*; to Messrs. Macmillan & Company, Messrs. G. P. Putnam's Sons, Messrs. Eldridge & Brother, and Messrs. Houghton, Mifflin & Company, Messrs. Charles Scribner's Sons, Messrs. Henry Holt & Company, for material upon which they have copyright; to Judge Donovan for passages from *Modern Jury Trials*; to Judge Robinson for quotations from *Forensic Oratory*, and to Judge Wharton for quotations from *The Law of Evidence*. Due credit is given for this and other material, wherever it is used.

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**THE ESSENTIALS OF ARGUMENTATION.**



## INTRODUCTION.

Argumentation is one of the most practical and important forms of composition, because of its general use; at the same time it is one of the most difficult. It finds employment in the pulpit, at the bar, in the legislature, in the lecture-room and laboratory, in the press, in practical affairs, — indeed wherever men endeavor to overthrow error or establish truth.

**Use of Argumentation.**

Before entering upon the study of argumentation, the student is supposed to have mastered those principles of style which underlie all efficient communication by language. The first of these is grammatical correctness, or the use of the right parts of speech in a form corresponding to their office in the sentence, and appropriate to the words with which they are brought into relation; a second is pure, proper and precise diction, or the use of only such words and expressions as are sanctioned by the uniform practice of the reputable writers and speakers of the present time, and with the exact meaning which they authorize; a third is clearness, or the selection of such appropriate words, — as few as may be compatible with completeness of statement, — and the arrangement of these words in such an order that the meaning will be unmistakable.

**Students' Equipment: Rhetorical.**

To these must be added force, or the use of the most effective language, and elegance, or the use of those expressions, literal or figurative, which are most pleasing to refined taste.

It is assumed also that the student is somewhat familiar, theoretically and practically, with the special forms of composition often indispensable to successful argumentation. He should have some skill

**Literary.**

in description, the delineation of a concrete visible object, real or fictitious, or the enumeration of the co-existent parts or qualities of a whole. He should be practiced in narration, which involves the enumeration in proper order, of the successive details of an event or occurrence. Especially to his advantage will be a mastery of exposition. This is the process of unfolding a term, theme or proposition, so as to make clear its full meaning,—a discussion of objects, events, and principles, in their general aspects.

The student should also have acquired such a knowledge of history, science, literature, current events and practical affairs, that he either possesses data for arguments and illustrations, or knows where to

**General.**

look for them. He should have learned not only where to read but how to read; he should know where, what, and how to observe; he should know from what persons he may obtain trustworthy information upon a given subject, and be able to select from the facts gathered whatever is pertinent to his proposition.

Besides, he who would profitably follow or successfully construct an elaborate argumentative

**Logical.**

discourse, must also know something of the general principles of logic,—the laws of the syllogism,



the relation of cause and effect, analogy, evidence, and the ordinary processes of induction and deduction. The theory of argumentation involves all of these; the practice involves sometimes one, sometimes another, sometimes several, according to the nature of the proposition argued. The lawyer becomes an expert in the use of evidence and analogy; the clergyman acquires skill in deduction and inference from authority; the lecturer on natural science usually employs induction; the mathematical reasoner demonstrates his propositions by deductions from established principles, axioms and definitions; the editor and the man of affairs, whether consciously or not, employ all. That many will enter upon the study of argumentation without this knowledge is a sufficient reason for introducing a brief discussion of these subjects, though they belong properly to logical rather than to rhetorical argumentation.

In general, the same principles govern discourse addressed to hearers and that addressed to readers. Elements especially essential to oral discourse will therefore be noticed in their proper relation. Except in scientific discussion, argumentation is ordinarily used in connection with persuasion and as its basis. This is the case in the courts, in the legislature and in practical affairs. Judges and juries, accepting certain principles, are persuaded to decide in favor of certain persons or institutions. Legislators, convinced of certain truths, are persuaded to vote in favor of measures which accord with those truths. Men, attaining a certain belief, are persuaded to pursue or to abandon a course of action in accordance with this belief. The writer of rhetorical argument usually composes his

**Spoken and  
Written  
Discourse.**

discourse with an ideal hearer or reader in mind, or with special reference to a definite body of readers or listeners. The following discussion is therefore made to cover the general principles of persuasion as well as of argumentation.

# THE ESSENTIALS OF ARGUMENTATION.

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## CHAPTER I.

### DEFINITION AND RELATIONS.

Argumentation is the process of proving or disproving a proposition. Its purpose is to induce a new belief, to establish truth or combat error in the mind of another. It is a rhetorical process, communicating truth for the sake of conviction. It presupposes not only a knowledge of the truth to be communicated, but also of the process by which the arguer has reached that truth. It differs from reasoning, which is a logical process and inquires after truth for its own sake. At the start the exact truth to be established may be unknown to the reasoner or investigator. Rhetoric finds or invents and presents arguments. Logic finds truth and tests arguments. Exposition aims at instruction by making thought clear, and has to do with either terms or statements. Argumentation implies controversy; it aims to make thought convincing, bringing the hearer or reader over to the arguer's state of mind. It has to do with propositions, and proofs or arguments. Its laws may be deduced from

**Definition.  
Relation to  
Reasoning  
and Expo-  
sition.**

those argumentative productions which have been most effective.

In its narrow, technical sense, argumentative discourse, like exposition, is addressed to the intellect. Persuasion is addressed to the feelings. But however

**Theory and Practice.** distinct from persuasion exposition and argumentation are in theory, it is impossible to keep them separate in practice. One may wish in the same address to inform, to convince, to arouse; to explain a fact, to establish a truth, or to influence an action. In its broader sense, then, including persuasion, argumentative discourse is also addressed to the emotions and the will, inciting men to action and shaping their purposes. Technically its connections are logical, its conclusions those of the understanding. Practically it does not stop with conclusions, nor, except in the realms of pure science, is it satisfied with beliefs, not leading to action. Argumentation becomes oratory when, as spoken discourse, it impels men to achievement or guides their careers.

Reasoning is not confined to any one department of human knowledge, nor to any particular rank of men.

**Reasoning Universal.** By experiment the farmer reaches conclusions as to the best rotation of crops. The mechanic reasons to as fixed conclusions upon the adaptability of different woods and metals to special purposes. Their reasoning is as real, if not so logical, as that of the trained scientist, jurist or statesman; and the process is practically the same whatever the topic. However mysterious the terms "deduction"<sup>1</sup> and "induction,"<sup>2</sup> the processes are common enough.

<sup>1</sup> Pages 15, 88.

<sup>2</sup> Pages 15, 108.

Almost every person in the course of a day sets in motion a complex train of reasoning of the same kind, though differing in degree, as that which a scientist goes through in tracing the causes of natural phenomena.

“You go into a fruiterer’s shop, wanting an apple; you take up one, and, on biting it, find it sour; you see that it is hard and green. You try another, and that, too, is hard and green and sour. The shopman offers you another, but, before biting it, you examine it and find that it is hard and green, and you say you will not have it, as it must be sour, like those that you have already tried. You have performed the operation of an induction. You found that in two experiences, hardness and greenness in apples went together with sourness—a small basis, but enough to make an induction from. You base upon this the general law, all hard and green apples are sour. Having got your general law, you say, when offered a hard, green apple, ‘All hard and green apples are sour; this apple is hard and green, therefore this apple is sour.’ This train of reasoning is what logicians call a syllogism,<sup>1</sup> and has all its various parts and terms, its major premise,<sup>1</sup> its minor premise,<sup>1</sup> its conclusion. By the help of further reasoning, which if drawn out would be exhibited in two or three other syllogisms, you arrive at your final determination, ‘I will not have this apple.’ Later, when asked how you know all hard, green apples are sour, you say, ‘I have tried them over and over, and always found them so.’ If we were talking (in terms of) science instead of common sense, we should call that experimental verification.”<sup>2</sup>

The test of the conclusion reached is the same in all

<sup>1</sup> Pages 89, 90.

<sup>2</sup> Huxley, *Darwiniana*, 365.



fields of inquiry. Here, however, the disciplined logician has the advantage. Here is the sharp line of distinction between the ordinary thinker and the scientific reasoner.

**Tests Are  
the Same.**

“The validity of the argument, when constructed,” says Mr. Mill in his *Logic*, “depends on principles, and must be tried by tests which are the same for all descriptions of inquiries, whether the result be to give A an estate, or to enrich science with a new general truth. In the one case and in the other, the senses or testimony<sup>1</sup> must decide on the individual facts; the rules of the syllogism (the joining together in thought of two propositions) will determine whether, those facts being supposed correct, the case really falls within the formulæ of the different inductions under which it has been successively brought; and finally, the legitimacy of the inductions themselves must be decided by other rules.”<sup>2</sup>

Arguing is as universal as reasoning. Thoughtful men of whatever station or pursuit, are not content merely to find truth, or adopt opinions. They insist that this truth is *the* truth, and strive to inspire in others confidence in it as such: they strive to enforce upon others opinions which they believe correct. Beliefs founded on prejudice or on insufficient knowledge, are to be met and overcome in every department of human activity. Wherever there are dissenting opinions on things as they are supposed to be or ought to be, — right and wrong, true and false, just and unjust, expedient and inexpedient, — men will debate. New fields are continually opening, and new investigations present fresh topics in old fields. Whether

**Arguing  
Universal.**



Moses wrote the Pentateuch; whether Homer and Tell were myths; whether the Silver Bill was good legislation; whether capital and labor can successfully combine in coöperative institutions, — are no more serious questions for discussion with some classes of thinkers, than whether it is expedient to build a new school house, whether potatoes should be planted in hills or in drills, or what is the most effective insecticide, are to others.

The formal parts of an argumentative discourse are usually, — (1) The Introduction, or Exordium; (2) The Body of Discourse, or Discussion, including the Proposition, the Partition, and the Arguments, or Proofs, and Illustrations, — all so arranged Parts of  
Discourse. as to make clear and establish the truth of a proposition; and (3) The Conclusion, or Peroration. The introduction and peroration may often be dispensed with. The persons addressed may, by what has gone before or by attendant circumstances, be sufficiently prepared for the discussion; and the discussion may be so clear, forcible, direct and earnest, that it may be more effective without any formal recapitulation or other reënforcement of what has once been well said.

## CHAPTER II.

## THE INTRODUCTION.

While a formal introduction is not always necessary, it is usually desirable. As the name implies, the introduction is preparatory to what follows: "the man, the subject and the occasion," need to be brought into relation. The hearer is to be put into possession of the subject, the point of view and the treatment. Other things being equal, the more briefly, simply and naturally this can be done, the better. Care must be taken to avoid the mechanical and artificial and merely general, if the introduction is to serve its purpose. This purpose is threefold: to lead up to the subject by giving necessary information or removing objections; to arouse attention and stimulate interest; to secure good-will and confidence. The length and nature of the introduction will depend largely upon the breadth and character of the discourse, but will be modified by the relation of speaker to subject, and of both speaker and subject to audience; but it *must* be clear, direct and to the point. An abrupt beginning is by no means the worst; to attack a subject boldly, to seize upon it firmly, is better than to approach it doubtfully and from afar.

The introductory paragraph of Webster's *Speech in the Dartmouth College Case* is a model of brevity, conciseness and clearness in bringing forward the general subject. It opens the way to the narrative which leads to his specific proposition:—

Webster's  
"Dartmouth  
College."

“The general question is, whether the acts of the legislature of New Hampshire of the 27th of June, and of the 18th and 19th of December, 1816, are valid and binding on the plaintiffs *without their acceptance or assent.*”

The subject as announced often seems dry, uninteresting, worn or commonplace, or a matter of only speculative interest. Special skill is needed in such cases to awaken attention and secure interest.

The energy expended in the introduction to overcome the hearer's indifference or prejudice and arouse his sympathy, will save itself many times in the discussion; and sometimes this advantage may be gained by merely stating the difficulty with frankness, and in a familiar colloquial style, as Professor Huxley does in his *Three Lectures on Evolution*.<sup>1</sup>

**Acknowledging Difficulties.**

Speakers often win attention from the start by proposing a subject as important, curious or otherwise interesting, and specially worthy of consideration. Sometimes if perfectly sure of their proofs and illustrations, they stimulate curiosity by stating their conclusion in a way to involve apparent contradiction, the hearer wondering how the strange, improbable or paradoxical will be explained. Frequently it is shown that the subject has been neglected, misunderstood or misrepresented. This intimation of something new by way of correction or explanation, may remove objections to what seems hackneyed, and subdue prejudices against the consideration of a forbidding subject. Such introductions, however, are liable to contain the same faults which

**Characterizing the Subject.**

<sup>1</sup> Page 224.

they attempt to remedy in the subject—the trite, the commonplace, the unpopular.

A personal introduction, calculated to render the audience well disposed toward the speaker, was considered very important by the ancients. In modern times it is less customary. There are frequent occasions, however, where the speaker, before he can make any actual advance with his argument, must secure the good-will of his listeners. He may be unpopular; his cause may be in bad repute; his hearers may be so fully possessed with an opposite view that they will listen to a discussion only from personal considerations. The beginning of Paul's speech on Mars' Hill affords a fine illustration of the personal, conciliatory introduction calculated to secure a courteous and candid hearing of a subject liable to offend:—

“Ye men of Athens, I perceive that in all things ye are too superstitious; for as I passed by and beheld your devotions, I found an altar with this inscription: *To the Unknown God*. Whom, therefore ye ignorantly worship, him declare I unto you!”<sup>1</sup>

The formal introduction may sometimes be omitted. The occasion may be such that it is rendered unnecessary. The subject may be of such general interest that the audience knows all approaches to it. To the last generation, “The Conduct of the Civil War,” was a subject lying so near the hearts and lives of the people that any formal approach to a discussion of it would have been superfluous. The subject may have been introduced by a previous speaker,

**After  
Another  
Speaker.**

<sup>1</sup> Acts xvii. 23.



and an introductory paragraph be necessary to recall, restate or emphasize the real topic. The beginning of Webster's *Reply to Hayne* is an example: —

“MR. PRESIDENT: When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are. I ask for the reading of the resolution before the senate.”<sup>1</sup>

The resolution read, and the subject brought clearly before the senate, Webster shows how everything else, past, present and future has been discussed except the real question, which, after meeting some personal charges, he proceeds to consider.

Webster's introduction in his argument at the trial of the murderers of Captain Joseph White, is in six paragraphs, each of which has a special purpose. The first is personal and conciliatory, stating his relation to criminal prosecutions affecting life. The second is personal and conciliatory, meeting objections to his appearing in the case, and stating his attitude toward the prisoner, toward crime and its punishment, and toward justice. The third characterizes the crime which has been committed. The fourth characterizes the criminal. The fifth narrates the supposed facts of the crime in explicit detail, and paves the way for the argument. The sixth is an exposition of the murderer's horrible mental agony, leading either to disclosure or to suicide, — which is confession.<sup>2</sup>

Webster's  
“White  
Murder  
Trial.”

<sup>1</sup> *Great Speeches*, 189.    <sup>2</sup> Pages 282, *et seq.* — Three transitional paragraphs are outlined in the introduction, page 350, under III and IV.

It is better to make the introduction too brief than too extended, — to assume that the audience is prepared for the discussion rather than to weary their patience

**Brevity.** with unnecessary preparation; to take attention and interest for granted, rather than waste time and energy in arousing them. It is best, whenever possible, to assume a favorable state of feeling on the part of the audience. To assume the existence of hostile feeling when there is little feeling or none at all; to refer to one's personal relations to the audience, the subject or the occasion, when these relations are not prominent, — is one of the most offensive expressions of egotism. If, however, either the speaker or the subject stands in an obviously unfavorable light before hearers, it is important to say enough to secure the speaker a fair hearing, and the subject a candid and even generous consideration.

The introduction is also intended to secure sympathetic mental action between speaker and listener. The qualities best adapted to effect this are absolute clearness and directness of statement, modesty, frankness, earnestness, moderation. **Other Qualities.** Modesty wins regard and promises only what it can fulfill. An unfeigned, outspoken method inspires confidence. The speaker's honesty must be so evident that the audience will not fear being practiced upon. Earnestness implies attachment to opinions and confidence in them. Moderation is the result of self-control. The introduction is no place for wild bursts of emotion; no facts have yet been presented as a justification of them.

Simplicity, clearness and directness, should charac-

terize the style of the introduction. There is no place here for high-wrought emotion, and therefore no place for pretentious and impassioned language.

The speaker must move on a low, even, eligi- **Style.**

ble plane, where the listener can keep pace with him. A simple, plain style, expressing appropriate ideas, will suffice to secure attention, arouse interest and awaken expectation; and this is sufficient save in exceptional circumstances.

Whether written first, according to common usage, or last, according to common advice, the introduction cannot be composed until a definite plan is formulated for the contents and development of the discussion. The introduction implies a knowledge of what is to be introduced.

**Time of  
Composing.**



## CHAPTER III.

## THE DISCUSSION.

## I. PLAN.

By discussion is meant the methodical development of a proposition; or, the systematic presentation of a proposition and proofs, along with all necessary definitions, explanations and illustrations. These,

**Definition.**

to be effective, must be arranged according to some well-organized plan. The discussion may be followed by an appeal to the feelings; or this appeal may be made at different points in the discourse, as the matter presented warrants it.

No one plan can be prescribed for all kinds of discussions. The arrangement of material will vary according to (1) the subject and the purpose of the discourse; (2) the form of the proposition and the kinds of arguments used; (3) the relation of subject and speaker to those addressed; (4) the time at the speaker's disposal; (5) the fact of arguing independently, or of being preceded or followed by an opponent; (6) whether the production is to be addressed to readers or hearers. But however such relations may modify a plan, a well-ordered presentation is necessary.

**Need of Plan.**

As the element of place governs the order of details in description, and that of time, in narration,—so logical effect is the chief determining element in arranging the parts of an argumentative discourse. Argu-

**Governing Principles.**

mentation has its origin in human thought, and must be governed by the laws of human

thought. Its material is more subjective than that of description and narration; its method, therefore, is less subject to prescription, and depends more upon the individual arguer's logical sense, and ability to arrange his material effectively. The problem is to find a sequence that shall lead forward naturally, aid the memory, compel the understanding and move the will. In general, the plan must make the conclusion to be reached unmistakable. It must aim at a just proportion of parts, such coördination and subordination as shall make clear the relation of part to part, and of part to whole, and make what is most important stand out most prominently. The best arrangement will make part strengthen part, will observe logical sequence, and obey logical necessity. Arguments, to be most effective, must be so ordered that the cumulative force of the whole, as well as of the successive parts, shall tend toward climax. Feeling should follow fact, and the persuasive follow the convincing.<sup>1</sup>

To form a plan for the most effective presentation of his proofs, implies on the part of the arguer a complete mastery of his proposition, and adequate knowledge of the logical processes through which he has come to believe in its truth. It implies **Knowledge Implied.** further, accumulating, weighing and selecting materials for proof. It involves a thorough acquaintance with the degree of intelligence, beliefs, prejudices and mental attitudes of those addressed. If the argument is to be part of a debate, making a plan involves a thorough knowledge of the opponent, his position, materials and method of procedure.

<sup>1</sup> Page 216.

It usually answers the purpose of those addressed if only so much of the plan is announced as can be made to coincide with the partition<sup>1</sup> of the proposition; but for the writer or speaker, while composing, a full outline or skeleton is indispensable. Only by this means is it possible to secure clearness, proportion, coördination and subordination, movement in effective sequence, and climax. Only by this means can repetition, confusion and irrelevance be avoided. Making an outline stimulates thought, develops the logical faculties, and often gives material a deeper meaning by bringing it into its proper relations. "A skeleton is not a thing of beauty; but it is the thing which more than any other makes the body erect and strong and swift. John Quincy Adams says, 'Divisions belong to the art of thinking.' They are fundamental, then, to the uttering of thought. To the same purpose is the old Roman proverb, 'He who makes careful distinctions, teaches well.'"<sup>2</sup>

Phillips Brooks also insists on the necessity of a plan: "The statement of the subject, the division into heads, the recapitulation at the end, all the scaffolding and anatomy of a sermon, is out of favor. . . . The true way to get rid of the boniness of a sermon, however, is not by leaving out the skeleton, but by clothing it with flesh. True liberty in writing comes by law; and the more thoroughly the outlines of a work are laid out, the more freely a sermon will flow, like an unwasted stream between its well-built banks. Most congregations welcome clear, precise statements of the course which a sermon is going to

<sup>1</sup> Page 194.

<sup>2</sup> Austin Phelps, *Lectures on Preaching*, 435.

pursue, carefully marked divisions of its thoughts, and above all, full recapitulation of its argument at its close.”<sup>1</sup>

Deductive means leading from something. The deductive plan starts with the conclusion and gives the proofs, going from the general to the particular. This arrangement, also called the method of enforcement, begins with a general truth or principle to be enforced. This it proves, applies, enforces, by means of minor truths, or principles, by facts, examples, illustrations, until the meaning and application of all are obvious and effective. The proposition to be proved is known from the beginning. The bearing of every step is evident. The application of principles is made prominent. Attention is economized; memory is not burdened; but no special curiosity is aroused.

**The  
Deductive  
Plan.**

Inductive means leading toward something. The inductive arrangement begins with the statement of known facts, particulars, or elementary principles, and by classifying and grouping these, gradually leads to a general conclusion, truth or principle, giving the meaning and making clear the application of the whole. Its movement is the opposite of deduction. It gives the proofs before drawing the conclusion, thus preparing the way for its acceptance. It stimulates curiosity, but it strains attention. It is adapted to the establishment of new or strange truths, which, if stated before they were proved, might awaken doubt or opposition.

**Inductive  
Arrange-  
ment.**

Each of these methods has its advantages. The

<sup>1</sup> *Lectures on Preaching*, 178.



deductive is the natural method of instruction, and assumes a complete mastery of the subject. The inductive is the method of investigation, and assumes that the arguer is only leading those addressed along a line of inquiry. The two methods may be combined in the same discourse, the principal divisions proceeding according to one, the subordinate divisions, according to the other; or one part of the discourse may be arranged according to one method, while another part follows the other method. The arguer must use his judgment as to which will be most effective.<sup>1</sup>

The plan is primarily for the guidance of the writer or speaker while composing his work. It may vary in length and fullness, therefore, from the few headings jotted down by the extemporaneous speaker, to the elaborate brief of the lawyer or the systematic outline prefixed to a scientific treatise. Its fullness will depend upon many circumstances; the length of the discussion, the difficulty of the reasoning, the manner in which the completed production is to be presented, the experience of the arguer or debater, the character of the arguments used. It should at least state the proposition, define terms, and make clear the specific truth to be established. It should present, with properly noted coördination, the chief propositions used as proofs, with subordinate propositions, also properly marked, going to prove these. The lawyer's brief must clearly indicate the complete line of argument in the case, with authorities on disputed points.

**Two  
Methods  
Combined.**

**Brevity or  
Fullness of  
Plan.**

With Burke's experience and perfect mastery of his subject, the following *topical* outline was perhaps sufficient for his purpose, in his argument on *Burke's Conciliation with the Colonies*:—  
Burke's  
Outlines.

## INTRODUCTION.

## DISCUSSION.

PART I. — *Condition of America.*

1. Population.
2. Trade, Agriculture, Fisheries. (Against use of force.)
3. Character of Colonies.

PART II. — *How to Deal with America. Three Alternatives.*

1. To alter moral causes of the character of the Colonists.
2. To prosecute them as criminal.
3. To yield to them, giving up the question of right.  
     Such a concession would not lead to further demands.

PART III. — *The Resolutions.*

Removal of objections.

Criticism of Lord North's plan.

## CONCLUSION.

But had Burke been a beginner in argumentation, or had he examined sources, collected, analyzed, and chosen material for this occasion alone, or had he been presenting his brief to a court, he would probably have made an outline more like that on pages 362–371.

Similarly, Webster might have used at the White murder trial,<sup>1</sup> notes something like the following:—  
Webster's  
Plans.

1. Personal explanations; supposed facts; effect on community.
2. Provisional refutation, mostly personal.
3. Statement of the case; statement of proofs.
4. Murder the result of conspiracy, and the prisoner a conspirator:—

<sup>1</sup> Page 282 *et seq.*

- (a) Appearance of premises.
- (b) Joseph Knapp's motive.
- (c) Testimony, and circumstances, specially, —
- (d) The will,
- (e) Long contemplated murder.
- (f) Curious action of the Knapps, specially, —
- (g) Hiding of door key, and Frank's presence on the eve of murder.

5. Frank Knapp was present, aiding and abetting : —

(Terms defined.)

- (a) Refutation of other motives.
- (b) Other refutations.
- (c) Inferences from Frank Knapp's presence.
- (d) Unsuccessful attempt to prove *alibi*.

6. The deadly weapons found ; inferences.

(a) Objections answered.

7. Joseph Knapp's confession and retraction ; inferences : —

(a) Testimony bearing on these inferences.

8. Frank Knapp confirmed Joseph Knapp's statements, and revealed his knowledge of the crime in many ways.

9. Conclusions ; summary.

10. Address to Jury ; must do its duty.

It is likely, however, that Webster's outline more nearly resembled that following the speech, page 350, with ample references to decisions in support of his interpretation of facts, of the admissibility and competence of evidence, and of whatever else might come into question.

The extended outlines<sup>1</sup> show:—

**What These Outlines Show.** 1. An introduction, in which facts are presented necessary to an understanding of the discussion; the origin of the case, and the speaker's relation to it; the definition and exposition of terms, limiting the specific subject of discussion.

<sup>1</sup> Pages 350-371.



2. A discussion, in which by a series of headings and subheadings, the method of developing the argument is made intelligible; the propositions which support the case, grouped according to some carefully chosen principle, and supported by other propositions. At a suitable point, the objections, or propositions which make against the case, are stated, and the refutation is indicated in the same manner. In general the climax order is followed.

3. A conclusion, which in the one case is a set of propositions embodying the results of the discussion, closing with the proposition propounded at the outset; and which in the other, is a summary and enforcement of the results of the discussion, following the answer to possible objections.

In the outline of Burke's speech the method of rhetorical deduction is followed. In the outline of Webster's speech the main propositions supporting the case, are in the inductive order, while subordinate propositions are sometimes in the deductive, sometimes in the inductive order. In the outline of Burke's speech, the conclusion is reached before the resolutions, and by these and the answers to objections, it is reinforced and repeated at the close. The outlines do not show the partition of the proposition, nor all the summaries after lines of reasoning.

The natural sequence of the different classes of arguments<sup>1</sup> will in general control the order of propositions in an outline. Arguments should be so presented as to be most convincing singly, and yet be so grouped as to be most effective in

**Order of  
Arguments.**

<sup>1</sup> Page 191, *et seq.*

combination. At the same time they must be so collocated and articulated as to render most efficient aid to the memory of reader and hearer. The natural order of arguments will be discussed later.<sup>1</sup> Whatever arrangement will best mark the stages of argument, give the clearest perspective, and best reveal the proportions of the discourse, will be most helpful to the memory.

The first requisite in an outline is careful correlation. Elements of like importance must occupy similar positions. Each argument going to establish the original

**Correlation.** proposition, or essential to the line of reasoning adopted, should be made a chief point in the outline. These arguments, stated in concise, clear-cut, unequivocal propositions, should be as inclusive as is consistent with clearness, and as few as completeness will allow. Sometimes they will coincide with the partition<sup>2</sup> of the original proposition. In Burke's *Speech on Conciliation*, there are only eight. In Webster's *Speech at the White Murder Trial*, in the discussion proper, there are two general propositions — and thirteen and seventeen arguments respectively supporting them. The usual tendency is toward making these secondary propositions too numerous, taking material for them which bears but indirectly on the statement to be proved, and which should, therefore, be subordinated to another proposition.

There must be the same accurate correlation of material in support of secondary propositions. Every statement subordinated to these must bear directly upon them, and through them upon the general proposition. These, in turn, may

**Subordination.**

be supported by statements, and so on to ultimate facts or evidence of facts. The number of propositions will increase with their distance from the main proposition, and will vary according to the character of the proposition which they go to prove. Clearness, unity, impressiveness and power of convincing, are likely to be in proportion to the pains taken by the writer in this respect.

When no other principle controls, both understanding and memory are aided by a natural sequence. Economy of mental energy is thus secured. Those addressed are enabled to do a part of the work for themselves. In narrative the order of time controls. In description the order in which details naturally present themselves to the beholder, suggests the order of presentation in words. So in reasoning, the order in which thoughts grow out of one another or in various ways suggest one another, is also an economical order of verbal presentation.

**Advantage  
of Natural  
Order.**

Other things being equal, the order of climax should be observed. Climax, as a law of arrangement of proofs, is of no less importance than as a law of style. Discourse, especially expository and argumentative, must be a growth. It is more effective if there is a gradual increase of interest and importance from first to last. If climax arrangement is impossible in the body of discourse, something of the same effect may be secured by a recapitulation at the close, concentrating the force of the entire discourse by summarizing details in the order of climax.

**Order of  
Climax.**

The chief divisions are landmarks indicating the general progress of the discussion. Subordinate divisions

mark the movement in shorter stages. As the latter shade off into regular discussion, greater care is needed to arrange them in the order in which they will be most easily and surely held in memory. The logical arrangement of the greater divisions will give movement and effectiveness to the whole; the grouping of lesser divisions as well as of details, according to the laws of mental association, will give coherence, and so enable the memory most easily to retain them. Ideas are associated in many ways, as by resemblance, contiguity, contrast, cause and effect.

**Principles of Grouping Details.** We speak of the field of thought. The figure suggests ideas naturally lying near each other in a continuous course of reasoning. Facts suggest closely related facts. Evidence suggests other evidence from the same source or to the same effect. Testimony from one witness suggests like testimony from another witness or contradictory testimony from the same. One likelihood suggests another based on the same reason. One event suggests other events occurring at the same time or place, or involving the same persons and things. Personal characteristics suggest others of a like nature. Stinginess suggests heartlessness, benevolence suggests honesty. Beauty of person suggests purity of mind, deformity suggests baseness. Cause and effect are the most intimate of all associations. The healthy mind naturally inquires for a cause, an effect being present, or watches for effects when a force is in operation. No other principle of grouping is so important or so frequently employed in arguing. A marked example is Burke's grouping in the passage against the use of



force,<sup>1</sup> and the passage accounting for the spirit of the colonies in the *Speech on Conciliation*.<sup>2</sup> A good example of grouping by contrast is the antithesis between Burke's policy toward the colonies and Lord North's, in the same address.<sup>3</sup>

"If a student take the affirmative of a common debating-club proposition, 'Suffrage should be extended to women,' he will find after collecting his proofs, that they need to be sorted and arranged. For example, the following may occur to him : —

(a) Woman suffrage is in successful operation in several states.

(b) Women who pay taxes are entitled to representation.

(c) On the score of individuality, women are entitled to a voice in public affairs.

(d) More intimate connection with public affairs would react favorably on women's training of their children.

(e) Woman suffrage tends to elevate the tone of politics.

(f) Women are not adequately represented at present.

It will be seen on examination that (d) and (e) bear on the desirability of woman suffrage, (a) has to do with its practicability, while (b), (c), and (f) relate to the justice of the measure.

These arguments can therefore be arranged : —

1. Woman suffrage is demanded by justice.

2. It is desirable for the advantage of

(a) The woman,

(b) The home,

(c) The nation at large.

3. It is practicable."<sup>4</sup>

It is difficult to show in an outline the method of transition from stage to stage of the discourse, unless the transition is made by means of a special paragraph. And yet nothing conduces more Transition. to mark the progress of reasoning, to give an idea of

<sup>1</sup> Page 25.

<sup>2</sup> *Select Works*, I. 178.

<sup>3</sup> *Ibid*, 228.

<sup>4</sup> *Educational Review*, October, 1897, page 290.

unity, and to preserve the continuity of the whole, than does a natural, easy, graceful transition from one division to another. If there is a link paragraph, it may be noted in the plan. Ordinarily the transition is made by closing the last paragraph of a division with a statement which reaches over into the next division and prepares the way for it, or else by beginning a division with a statement which reaches back to something in the preceding discussion or retains something of what has gone before. Such transitions cannot be indicated in an outline. How transitions may be most effectively made depends on the order of arguments,<sup>1</sup> and must be taken into account when the plan is made. Burke sometimes reaches forward, sometimes backward:—

“I shall therefore endeavor, with your leave, to lay before you some of the most material of these circumstances in as full and as clear a manner as I am able to state them. The first thing we have to consider with regard to the nature of the object is—the number of people in the colonies.”<sup>2</sup>

“But the population of this country, the great and growing population, though a very important consideration, will lose much of its weight if not combined with other circumstances. The commerce of your colonies is out of all proportion beyond the numbers of the people.”<sup>3</sup>

He makes the transition from the discussion of the condition of the colonies to their spirit, by the entire passage of five paragraphs against the use of force; and the transition from this passage to the discussion of the spirit of the colonies is made by means of a paragraph the first part of which looks backward upon

<sup>1</sup> Page 191 *et seq.*

<sup>2</sup> *Select Works*, I. 168.

<sup>3</sup> *Ibid.* 169.



what has been said, and the second half of which, looking forward to what is coming, paves the way for it.

“First, Sir, permit me to observe that the use of force alone is but temporary. It may subdue for a moment, but it does not remove the necessity of subduing again; and a nation is not governed which is perpetually to be conquered.

“My next objection is its uncertainty. Terror is not always the effect of force, and an armament is not a victory. If you do not succeed, you are without resource; for, conciliation failing, force remains; but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence.

“A further objection to force is, that you impair the object by your very endeavor to preserve it. The thing you fought for is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest. Nothing less will content me than *whole America*. I do not choose to consume its strength along with our own, because in all parts it is the British strength that I consume. I do not choose to be caught by a foreign enemy at the end of this exhausting conflict; and still less in the midst of it. I may escape; but I can make no insurance against such an event. Let me add, that I do not choose wholly to break the American spirit; because it is the spirit that has made the country.

“Lastly, we have no sort of experience in favor of force as an instrument in the rule of our colonies. Their growth and their utility have been owing to methods altogether different. Our ancient indulgence has been said to be pursued to a fault. It may be so. But we know, if feeling is evidence, that our fault was more tolerable than our attempt to mend it; and our sin far more salutary than our penitence.

“These, Sir, are my reasons for not entertaining that high opinion of untried force by which many gentlemen, for whose sentiments in other particulars, I have great respect, seem to be so greatly captivated.”<sup>1</sup>

<sup>1</sup> Burke, *Select Works*, I. 177.

The purpose of an outline is to enable the arguer so to arrange and present his arguments, facts and illustrations, as to be convincing and persuasive; and in

addition to this, to make them most easily

**Summary.**

grasped and most firmly held in memory.

Effectiveness depends on skillful planning. Planning depends on thorough analysis of material. Analysis implies thorough mastery and full possession of all the facts, circumstances and evidence, bearing on the proposition to be established or overthrown. When an adequate plan is conceived and completed, the arguer is a long way toward the completion of his discourse. It is possible, however, that a good plan may, through slipshod development, underlie a worthless production; and it is equally certain that a poor plan will not give the framework for an excellent structure.

## II. BODY OF ARGUMENT.

The body of any discourse the aim of which is conviction or persuasion, consists in general of proposition and proof. The proposition is that which is put for-

ward to be proved or disproved. When es-

**Proposition**

**and**

**Proof.**

tablished, it is also called the conclusion.

Proof is anything serving, immediately or mediately, to convince the mind of the truth or falsehood of a proposition, "the sufficient reason for assenting to a proposition as true."<sup>1</sup> Proof becomes argument when it is used to convince another. Argument<sup>2</sup> differs from proof in implying unbelief which is to be combated, a proposition which is to be established against the tacit or avowed opposition of certain persons. Many terms,

<sup>1</sup> Wharton, *Law of Evidence*, 4.

<sup>2</sup> Page 73.

like argument, proposition, proof, definition, subject, have both a logical and a rhetorical meaning. They are used here in their rhetorical sense.

Evidence<sup>1</sup> is a portion of truth, "anything which generates proof: any matter of fact the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of some other matter of fact."<sup>2</sup> Proof, in law, is a **Evidence and Proof.]** broader term than evidence. Evidence includes the reproduction of the admissions of parties and of facts relevant to the issue. Proof includes, in addition, presumptions of law and of fact, and citations of law. Evidence is adduced by witnesses and documents; proof may be adduced by counsel in arguments, or by the judge in his charge.

While either a term or a statement may be the subject of exposition, only a statement is susceptible of proof or disproof. The subject of argumentation, therefore, must always be expressed in the form of a proposition. The advocate may have to **Only Propositions Argued.** make clear by exposition what larceny or arson is, but he cannot argue the terms, "arson" and "larceny;" he can argue that "the prisoner is guilty of arson," or that "the prisoner is innocent of larceny."

The first business of the writer or speaker who would convince others, is to have clearly in mind his proposition as well as the logical processes by which he himself has come to his belief regarding it. Indeed, this is an advantage whether the discourse is to be argumentative, expository or hortatory. A proposition will hold the writer's efforts **Necessity of Proposition.**

<sup>1</sup> Page 41.

<sup>2</sup> Best, *Evidence*, 5.

to a single point better than any mere term, however clearly expressed. President Robinson recognizes this in his advice to young preachers:—

“The purpose of a sermon is to enlighten and convince, and not merely to entertain and please. The preacher is supposed to have a definite end in view. The more direct his steps toward it, the more likely his auditors will be to accompany him. They have a right to know what his aim is, and to demand that he shall take a straightforward and open road to reach it. He need not blunt the edge of their curiosity at the outset by telling them what all of his arguments are to be ; but the moment the movement of his thought begins, it should be movement with progress. There are few things of which audiences are more impatient than of labored movement with no apparent advance.”<sup>1</sup>

“Few discourses are less interesting or less profitable to intelligent people than those which consist of a series of disconnected paragraphs hung upon single words, clauses or sentences of Scripture, but disclosing no single principle that gives harmony and unity to the whole. At the outset, we are entertained, perhaps, with a vivid description of a bit of scenery, or of some august occasion ; then we have a scrap of archæology ; then a slight touch of exegesis ; then a patch of doctrine ; then a hit at physical science ; then a word of exhortation ; then a page from ancient history ; then a snatch of poetry ; and in conclusion, a contrast or comparison between the present and the time in which the text was written, — all leaving no single, definite impression.”<sup>2</sup>

If a speaker's object is to convince, his first step toward that object, his first precaution against confusion, is to set before himself a definite proposition, and make every utterance an advance towards its establishment. Whether the proposition be announced at the beginning or held till after some proofs are advanced, will depend upon circumstances. But it must be clear

<sup>1</sup> *Lectures on Preaching*, 141.

<sup>2</sup> *Ibid*, 145.



in the arguer's mind before he can establish it in the mind of another.

The proposition should, if possible, be stated simply, briefly, and in terms not only intelligible but unmistakable. If from the character of the subject the meaning of the proposition is not perfectly obvious, or if the terms are liable to be misunderstood or are susceptible of misinterpretation, the general meaning must be made clear by exposition or the terms be made clear by definition. This narrows the field of discussion. It directs all efforts to one point. It facilitates specific statement and avoids generalities.

**Necessity  
of Clear  
Statement.**

In a debate, where both sides are to be argued, additional care is needed in the statement of the proposition. It must be so worded as to exclude what is admitted on both sides. It must express the exact issue as understood by both debaters. The terms of the proposition must stand for the same thought with both speakers. If they do not, each side is arguing an independent proposition, which, instead of contradicting the other, may only touch it here and there; and perhaps each is true or each is false.

**In Debate.**

The definition of terms is no easy task. Sometimes the dictionaries give clear, simple, adequate definitions, in terms that are unequivocal or in synonymous expressions. But they often afford very little aid, for they define mostly by synonyms or by terms which themselves need defining. Logical definition rarely meets the requirements, since it gives only the genus and differentia. A good definition should be clear, fair, adequate, accurate, positive,

**Need of  
Good  
Definition.**

convincing, and as brief as is consistent with the other qualities. If the definition is not clear, not rendering the issue any more apparent, it does not help the reader or listener to follow the discussion. If it is not fair, it does not encourage him to follow. If it is not adequate, there will be gaps in coherence. If it is not accurate, it does not promise a reward for his following. If it is negative, it gives little aid to his following. If it is not convincing, he *will* not follow. If it is too long, it takes attention and energy which should be given to the discussion. A term may require not only definition, but analysis or elaborate exposition, illustration by antithesis, comparison, exemplification or detailed description. On the other hand, definition may be carried to excess. It is wise to assume average intelligence in those whom we would convince. The right kind of definition limits the proposition, puts the debaters and the hearers on common ground, and tends to do away with vagueness, confusion, and ambiguous or question-begging terms.<sup>1</sup>

Much of the first part of Lord Erskine's argument at the trial of Gordon,<sup>2</sup> consists in the definition and exposition of the term, "treason." The conviction or the acquittal of the prisoner depended on the meaning of that word. Webster's speech on *The Constitution not a Compact Between Sovereign States*<sup>3</sup> is largely an exposition of the terms in his proposition. Very rarely, however, is exposition made to do the work of argument throughout a long address. When Huxley, in his *Lectures on Evolution*,<sup>4</sup> had induced

Erskine,  
Webster,  
Huxley.

<sup>1</sup> Page 100.

<sup>2</sup> *British Eloquence*, 637.

<sup>3</sup> *Great Speeches*, 273.

<sup>4</sup> *American Addresses*, 4 30.



a considerable portion of his audience to accept his preliminary definitions, he had advanced a long way toward securing their assent to his theory. He stated the problem of creation as it has appeared at some time to most fair-minded, thinking men. He defined the three hypotheses so clearly, so fairly, so adequately, so convincingly, that it was difficult not to concede the reasonableness of his position. Then, because he depended upon circumstantial evidence to refute the old hypothesis and support the new, he in the same way defined both circumstantial and testimonial evidence, and explained the unfairness of popular prejudice against the former.<sup>1</sup> Every hearer must have known at the beginning of Huxley's argument, exactly what was to be proved, and have been ready to follow his proofs without prejudice. Those who read the lectures as they are printed, and accept the preliminary definitions and judgments, find difficulty in rejecting the conclusions.

An acute political writer thus explains the need of careful definition, and illustrates one method of defining: —

“At all events, ‘doctrine’ is an unfortunate term—in the first place, because it is not strictly descriptive. But the second objection to it is more serious. It is that the term fell among a people bred in theological discussion, and accustomed to use doctrine as a term of mystery and divine authority. Webster gives various definitions of it, such as ‘teaching,’ ‘instruction,’ like ‘Christ’s doctrine,’ or ‘a body of principles of faith,’ like the ‘doctrine of atoms,’ or ‘the doctrine of gravitation,’ or ‘the doctrines of the Bible.’ He mentions the Monroe Doctrine, but he gives no definition of ‘doctrine’ which will cover Monroe’s recommendation. In fact, in popular use, both in Monroe’s

time and down to our own day, a doctrine was something which had super-human authority behind it, and which could not be approached from a purely mundane point of view. To the ordinary 'plain American,' a doctrine is something different from, and much more serious than, an opinion, or theory, or recommendation; something to be handled more reverently and to be accepted with less question. He finds it difficult to believe, therefore, that Monroe's advice to interfere in the affairs of the Spanish-American states if they are attacked by a European power, is a piece of political advice, to be examined (like every other) as a piece of policy with reference to time, place and circumstances, and probable result.

"Policy is something intended for human happiness, and to be considered with reference to human comfort and convenience, while doctrine concerns the things of the spirit, the unknown or unknowable concerns of the individual soul. A nation which lives by doctrine is necessarily, like Turkey, somewhat, at least, of a theocracy. It has often to pursue courses in obedience to the doctrine, which are full of misery for man as a member of human society. A nation which lives by policy or expediency, on the other hand, asks itself at every step, 'Does this make for justice, for peace, for law? Is it reasonable? Will it increase the burdens or promote the comfort of the poor? Will it cherish the great interests of civilization, the spread of knowledge, the rule of science, the feeling of brotherhood among the sorely tried and much puzzled nations of the earth?' Of all the misfortunes which can overtake a society, the greatest is having to live under a dominion which cannot be discussed, and which cannot be judged by its probable results.

"For these reasons, and many others for which we have no space here, we think the chances of future peace and order on this continent would be much improved if we got into the way of talking of the Monroe Doctrine as the Monroe Policy, and taught the coming generation that, far from being a thing to die for, it was a thing to examine when the time came for its use, just like taxation, or the liquor question, or good roads, or judicial organization. This Government was founded first and foremost for the benefit of citizens of the United States, and

not for that of Venezuelans, Guatemalans, Costa Ricans, or Chilians. Monroe meant his doctrine avowedly to subserve, before all else, the safety, honor, and welfare of his own country.”<sup>1</sup>

The proposition ought to be stated affirmatively. A negative does not admit of the simple and direct proof of which the affirmative is capable. The difficulty in proving a negative is recognized in the laws of Burden of Proof and Presumption.<sup>2</sup> In Statement,  
Affirmative. debate the affirmative side must make out a case. The negative side meets the arguments proposed. So the affirmative both opens and closes the debate. Burke, discussing the unlawfulness of arbitrary power, virtually a negative proposition, establishes it by exposition and by positive, incisive denials, quite as much as by reasoning. Each of these denials presents the same difficulty in proof as the general proposition:—

“No, my Lords, this arbitrary power is not to be had by conquest. Nor can any sovereign have it by succession; for no man can succeed to fraud, rapine and violence. Neither by compact, covenant, nor submission,—for men cannot covenant themselves out of their rights and their duties,—nor by any other means, can arbitrary power be conveyed to any man. Those who give to others such rights perform acts that are void as they are given,—good indeed and valid only as tending to subject themselves, and those who act with them, to the Divine displeasure; because morally there can be no such power. Those who give and those who receive arbitrary power are alike criminal; and there is no man but is bound to resist it to the best of his power, wherever it shall show its face to the world. It is a crime to bear it, when it can be rationally shaken off. Nothing but absolute impotence can justify men in not resisting it.”

<sup>1</sup> *The Nation*, January 30, 1896.

<sup>2</sup> Page 34.

One who argues independently must agree with his audience, and one who opens a debate must agree with his opponent, as to what shall be taken for granted in defining the issue. Judicious concession limits the question, shortens discussion, and gives point to debate. An affirmative proposition requires in its support positive, constructive arguments. He who affirms, assumes either the non-acceptance or the denial of his proposition, on the part of an opponent or of some of those addressed. Hence the rule in law, — “He who affirms must prove.” This is called locating the burden of proof. He upon whom the burden of proof does not rest, is said to have the presumption in his favor,—or his proposition is taken as true without proofs or in advance of proofs. The location of the burden of proof and the advantage of the presumption, must be taken into account in stating a proposition; for most subjects of argument may have either side stated affirmatively.

The burden of proof lies with him who advocates a change, whether in another’s belief or condition, or in existing institutions. In a community believing in special creation, Huxley affirms that the present condition of the earth is the result of evolution. He must produce satisfactory evidence to sustain his proposition. Webster affirmed that Captain White was murdered through a conspiracy in which Frank Knapp was concerned. He must adduce such proofs as to establish Knapp’s guilt beyond a reasonable doubt. Knapp affirmed an *alibi*. He should have proved it. Burke affirmed that peace with the Colonies could be best secured by means of conciliation.

**Burden of  
Proof and  
Presumption  
Defined.**

**Burden  
of Proof  
Located.**



He was bound to prove his proposition. One who asserts in court that another owes him, and demands judgment, must prove the indebtedness. The legislator who proposes either a new law or the repeal of an old one, must prove the advantage or the necessity.

The same rule which governs forensic argument, is applicable to literary and scientific argument. The debater cannot expect others to change their beliefs without sufficient reasons, any more than the lawyer can expect the court to render judgment, or the jury to bring in a verdict, without his having produced sufficient evidence. Whoever proposes a new principle, theory or condition must bring forward the proofs in its favor. Should a member of Congress propose the admittance of New Mexico to statehood, he must show that the Territory is qualified for the change. So he who should propose woman suffrage in Iowa or its abolition in Utah, or prohibition in Wisconsin or its abolition in Maine, or the choice of United States senators by popular election, or appointment of the governors of States by the President, must show good and sufficient reasons for the innovation.

The presumption is generally in favor of present custom, of the side attacked, of the established order of things, of the prevalent practice, belief or opinion, of the present condition of any class. Frank Knapp was presumed to be innocent until he was proved guilty. The practice of compelling colonies to pay taxes was presumed to be most expedient until a better method was established. The "Miltonic" theory of creation had the presumption in its favor among Christian people, when Darwin, Wallace,

Presumption  
Favorable.

Huxley and others, began arguing for evolution. In the United States there is a presumption in favor of a written constitution, quadrennial election of President, election of senators by State legislatures, appointment of postmasters by the President, disunion of church and state, nonsectarian public schools, and individual or corporate ownership of railroads and the telegraph. In England there is a presumption in favor of an unwritten constitution, an hereditary monarchy, and union of church and state. In Germany the presumption is in favor of government ownership of railroads and the telegraph, of sectarian instruction in the public schools, and of beer as a common beverage.

A distinction is sometimes made between presumptions like these, which have a place in argumentative discourse, and presumptions of law and assumptions. A

**Presumptions of Law.** presumption of law is a rule prescribed by immemorial custom, decisions or legislation, for

the guidance of courts. Judges are directed to draw particular inferences from certain facts or evidence, sometimes absolutely, sometimes until the truth of such inference is disproved. The inference is that a child under seven years of age cannot commit a crime. So if a person is proved insane or an idiot, the court must infer that his acts are not criminal. If it is shown that a promise is secured by force or duress, the court must infer that the promisor is not bound. Such presumptions amount to conclusive proof. If a person has been absent seven years, and not heard from by those who would naturally hear from him if he were alive, the court infers his death, which, however, may be disproved. The degree of probability of the truth of a



presumption varies from a slight expectation, to such certainty as may rest on the unchangeableness of natural laws. Presumptions are based on general human experience, as also are most assumptions.

An assumption is the provisional or absolute acceptance of the truth of a proposition without reference to proof. It may vary in force from a mere guess to the certainty of a self-evident proposition. As-  
Assumptions.  
 sumptions are the ultimate basis of much reasoning. An hypothesis is assumed as the basis of deduction.<sup>1</sup> Induction assumes that all instances are like those examined. In mathematics an assumption is called an axiom. In practical affairs it is called a maxim. In argumentation assumptions shade off into presumptions. That the whole is greater than any of its parts is an axiom. That no man can serve two masters is a maxim. That men tell the truth rather than falsehood is an assumption. That a particular witness will, when called, tell the truth in a particular case, is a presumption.

Presumptions and such assumptions as have a place in argumentative discourse, then, vary in force and direction according to their basis in experience, the character of the facts from which they are inferred, and the time and place of the infer-  
Varying  
Force.  
 ence. It is assumed in America that all persons are born free and equal. This is not an assumption of William II. concerning the Germans. It is assumed that scholars understand their subjects, and in their publications are candid and trustworthy. A decade ago there was a strong presumption against woman

<sup>1</sup> Pages 88, 129.

suffrage in the United States. Now, the presumption is quite as strong in the opposite direction. Other presumptions that have changed with the progress of time are those against the use of bicycles for business purposes, the use of electricity as a source of light, as a motor, and as a heating agent, and the success of aerial navigation. In Mr. Gladstone's mind,<sup>1</sup> "The fact of existence carries with it the presumption of its continuance; which presumption holds good till rebutted by adverse presumption or proof." In Mr. Goldwin Smith's mind this presumption is not so strong. The presumption as to the beneficial effect of free silver upon the material prosperity of the country, would be different in the mind of a Montana silver mine owner, and in that of a New York banker. Possession of the private property of a murdered person is criminative evidence of a high degree, without reference to what the law says; but if he who has the property cannot satisfactorily explain how he came by it, the law presumes that it was taken in the perpetration and execution of the murder. The deliberate publication of calumny which the publisher either knows to be untrue or has no reason to believe to be true, raises a strong presumption of malice: the law makes this presumption conclusive proof.

The shrewd debater will take advantage of the presumption when possible. On matters of speculation or mere theory, however, as well as on matters  
**Cases of No** where there is no common established opinion,  
**Presumption.** and on many matters of expediency, there will be no presumption. 'That the pleasures of hope

<sup>1</sup> *North American Review*, clxii.

are greater than the pleasures of memory ;' 'That Lincoln was a greater statesman than Washington ;' 'That man has an intuitive belief in the true God ;' 'That there is transmigration of souls,'—are propositions of this kind. Man's knowledge, wishes, preferences and prejudices, do not amount to a presumption. In such cases the burden of proof lies on him who affirms either side.

In a debate it becomes a matter of agreement as to which side shall be affirmative and which negative. "It naturally devolves on the one who opens the debate, after clearing the ground by stating the question in full, with all necessary am-  
In Debate.  
 plification, exposition of terms and proposed limitations, to adduce arguments, constructive and positive, and of such force that some of them will be unanswerable." Of course, he is at liberty to anticipate counter arguments, objections and refutations. Such a course will tend to weaken the force of those arguments when they are brought forward by an opponent. On the other hand, there is the risk that it may be only so much wasted energy;<sup>1</sup> for an opponent may choose not to advance the argument or objection at all, though if he does this simply because he feels that its force has been already weakened, the energy can hardly be considered wasted. The negative will be victorious if it meets all the arguments of the affirmative. This is practically the meaning of burden of proof and presumption in debate.

It is to the advantage of him against whom the presumption lies, to change this at the beginning of

<sup>1</sup> Page 207.

his discourse, or as early as possible. A very little evidence may suffice to raise a counter-presumption, or strong evidence may be required, according to the strength of the presumption to be overcome. The presumption in favor of a protective tariff may be overcome by showing the abuses to which it leads, or the greater advantages of a modified tariff; or it may be shown that the prosperity of the country attributed to the tariff, is due to several other causes; or that another country, in other respects like this, is just as prosperous under a system of free trade. The presumption against woman suffrage may be overcome by evidence that where she has voted, the political air has been purified, more equitable laws have been enacted, and the moral tone of society has been elevated. This counter-presumption, again, may be changed by showing that the purification of politics, the enacting of better laws and the moral elevation of society, are due to other influences. Thus in any debate the presumption may shift from side to side with the progress of the discussion.

Removing a prejudice is often equivalent to overcoming a presumption. Individuals and communities usually have preferences and prejudices amounting to presumptions in favor of the opinions, political, social, religious and industrial, with which they have grown up, not knowing or understanding others. Enlightenment as to other opinions may change this prejudice, or overcome the presumption.

**Shifting the  
Presumption.**

**Removing  
Prejudice.**



## III. EVIDENCE.

Evidence is the general name for whatever is brought forward to substantiate a fact or establish a proposition. It may be a material object, an action, a quality or a condition, actually presented to those who are to be convinced. It may be a public document, an official seal, or the oral or written testimony of witnesses. It may be such a combination of related facts and circumstances as will admit of but a single reasonable explanation. It may be an opinion or interpretation of facts by one, who, having given this kind of matter careful examination, is specially competent to testify. Evidence is not necessarily proof; but it may be so presented, either alone or combined with other evidence, as to afford conclusive proof.

Knowledge at first hand, the evidence of one's own senses or consciousness, is the most convincing. One who witnesses a murder has little doubt as to the fact or the method of killing. According to the Bible account, Jesus convinced the disciples of his resurrection by actually appearing to them. Thomas was convinced of the Saviour's identity by an examination of his wounds. A man who on account of long absence is supposed to be dead, disproves the supposition by appearing alive to his family.

“By exhibiting facts Ex-Governor Flower shows that the collapse and ruin which have overtaken the country in the last twenty-five years are a mere figment of the fancy. This fancy is based upon and appeals to the universal human tendency to think of the remote past as ‘good old times,’ and to long for a

**Evidence  
Defined.**

**Best Evi-  
dence.**



return to them. The only way to dissipate it is to appeal to the actual facts. To the Watertownians, just beginning to dream of the good old times of 1870, when they were all so rich and happy, Mr. Flower speaks as follows: 'You now have 800 men employed in the manufacture of wagons. Did you have a single wagon factory in 1870? No. You have now 300 men engaged in manufacturing car-brakes. Did you have a brake company then? No. You then had two paper mills. How many have you now? Twenty-seven. At that time your population was 10,000; it is now 20,000. Were your wages higher? Not so high. Were your streets paved and sewerred? No.' And the audience recognized the voice of truth in the facts actually presented to them."<sup>1</sup>

Huxley was convinced of the successive steps in the evolution of the horse by seeing the fossil remains at different stages of development.

Very little proof, however, comes from knowledge at first hand, or the evidence of one's own senses. Juries seldom see the crime committed, or are even favored

**Rarity of  
Such Evi-  
dence.** with the testimony of witnesses to a crime. The jury were convinced of Frank Knapp's complicity in the White murder, by the testimony of witnesses, not to the fact of the killing, but to circumstances bearing on the fact. We believe in the facts of history because of our faith in human testimony. The present generation knows there was a Civil War from the testimony of those engaged in it. The guilt or innocence of most persons accused of crime is established by what is called circumstantial evidence,<sup>2</sup> for most crimes are not witnessed in detail. Scientific hypotheses are necessarily established in this way, as Huxley explains in the *Lectures on Evolution*.

<sup>1</sup> *The Nation*.

<sup>2</sup> Page 62.

Every kind of evidence varies in force and validity. One may be mistaken in the testimony of his own senses. Much that is seen or heard or felt is misinterpreted. On entering a room one thinks he sees fluted columns or carved cornices. What he does see is the figures of light and shade, which he misinterprets. One thinks he sees a friend enter a room. He actually sees a person of the same size and figure dressed like his friend. He mistakes inference for fact. One seems to hear distant thunder: it is the rumbling of a cart on a bridge. It is well known that those who have had limbs amputated, continue for a long time to complain of pain or cold in the severed member. They fail to interpret sensations according to the changed conditions. Strangers visiting the irrigated valleys of the west, almost invariably think that the water runs up hill, and that the mountains are close at hand. The clearer air and the steep declivities completely confuse the power of correct inference.

Trustworthiness of Evidence.

If we could separate observation from inference or interpretation, our senses would afford more trustworthy evidence. But the two acts are too nearly simultaneous to be distinguished; we are therefore continually mistaking our opinion or inference from a fact for the fact itself. When we say we see an object or hear a sound at a certain distance, we mean that our experience warrants our placing the object or sound at that distance. Thus we are often quite unable to determine where fact ends and opinion begins. The trustworthiness and force of this kind of evidence will be in proportion to the perfection of our senses, the acuteness of our

observation, and the habitual caution which characterizes our interpretation.

When we accept the testimony of others as evidence, we practically substitute their senses, consciousness and inferences for our own. The credibility of this kind of evidence rests on the assumption, based on experience, that men will tell what they believe to be true rather than what they know to be false. In trusting to others' testimony, there is still greater liability of mistaking opinion or interpretation for fact, than in trusting to the testimony of one's own senses. The fact and the mind to be convinced of the fact are a greater number of removes apart. "The principles of testimony," says Erskine, "are founded in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life." The assumption upon which the general credibility of testimonial evidence rests, does not warrant our belief in any particular witness on any particular occasion. This belief will be modified by the characteristics of each individual witness,—the perfection of his senses, his intelligence, his power of observation and of interpretation, his honesty, his memory, his power of expression, and many other circumstances. Locke says, "In the testimony of others is to be considered: (1) the number; (2) the integrity; (3) the skill of the witnesses; (4) the design of the author, where it is a testimony out of a book cited; (5) the consistency of the parts, and circumstances of the relation; (6) contrary testimonies."

Other things being equal, a witness with the habit of accurate observation and with keen senses, will give

the most trustworthy testimony. Careful and minute observation underlies complete statement. Careless Observation. "Contrary to the common idea, nothing is more difficult than correct observation of the Defective Senses. unanalyzed phenomena of nature and society. It is comparatively difficult for an uneducated man to tell the truth regarding any phenomenon or object which may have been presented to him. This is due in part to the incapacity of such a person for the use of language in description; but incapacity for accurate observation is a still more prolific cause of the difficulty. The inadequate and contradictory stories about foreign countries told by seamen and uneducated travelers, well illustrate this point. The capacity for minute and accurate observation forms the distinctive characteristic of successful poets, artists and men of science. The training of the eye to see, of the ear to hear, and of the hand to touch, forms the most difficult and important part of education, and it lies at the basis of all sound method."<sup>1</sup>

Defective sight, hearing or touch, may interfere greatly with the accuracy of a witness's report. A color-blind witness could hardly give competent testimony as to a danger flag or as to a lamp signal, when color is the matter in dispute. The testimony of a deaf witness would hardly convince a jury what signal was given by a bell or a whistle at a railroad crossing. A person with no delicacy of touch, and a dull sense of feeling, might easily be confused as to whether a piece of metal—a knife or a pistol barrel—were cold or wet.

The intellectual powers of a witness count for much.

<sup>1</sup> Anderson, *Lectures on Scientific Method*.



Even in common occurrences intelligence is required to understand what actually takes place. Memory must be accurate and retentive to recall the facts.

**Intellectual Powers.**

Power of expression is needed to report them accurately and faithfully. Power of interpretation must accompany perception. Dull people see ghosts, and stupid people hear death bells and other warnings. Simple-minded people report their vain imaginings for things seen or heard or remembered. Others leave gaps in essential matters, either from lack of perception or from lapses of memory. Indefiniteness in the meaning of words and looseness in the use of expressions, render testimony unconvincing. An object is light colored or dark, near by or distant, large or small, strange or familiar, to different persons.

A witness's character as well as his reputation affects his credibility. The testimony of a criminal is worthy of little credit, however keen his power of observation

**Character and Reputation.**

and fluent his power of expression. A man who is known to have lied once, is doubted on future occasions though he speak the truth; and the reputation of an habitual liar may render his testimony worse than worthless. The value of character as well as of intellectual qualities in a witness, is well shown in that part of Webster's speech,<sup>1</sup> in which he compares the respective claims of Colman and N. P. Knapp to credibility.

The value of testimony is modified by the beliefs of a witness. If he believes in the return of dis-

**Effect of Beliefs.**

embodied spirits, he may testify to having seen a ghost, when he has seen only a white ani-

<sup>1</sup> Pages 279, 330.



mal or a stump or a sign post, made white by the light of the moon. To him, the moaning of the wind about an angle, the hum of a telegraph wire, the rubbing of a branch against a window pane, may seem the voice of the dead. His belief is liable to keep him in such a mental condition as to incapacitate him for either accurate observation or just interpretation of phenomena presented. One who believes in supernatural warnings of coming disaster, will be all the more susceptible to illusive appearances; and his report will be so much the less trustworthy.

Cases in which illusion is due to beliefs, are to be distinguished from those which are the result of an overworked or overstimulated imagination. Sir Walter Scott is said to have seen a phantom of the dead Byron.<sup>1</sup> Luther's seeing the devil and hurling an inkbottle at him, is an historic incident. These illusions, however, would hardly affect the testimony of these men on any matters whatever.

Trustworthy memory will recall three things: (1) that something did really happen; (2) that it happened in the way the witness now thinks; (3) that it happened when and where it now appears to have happened. The witness's memory cannot be called reliable if he is indefinite on any of these points. There are three corresponding illusions of which even an honest witness may be the victim: (1) false recollections to which no real events correspond; (2) recollections misrepresenting the manner of happening; (3) recollections omitting or falsifying the date and time of the happening.

**Single  
Illusions.**

**Trustworthy  
Memory.**

<sup>1</sup> Sully, *Illusions*, 121.

Following the general experience of mankind, the common law rejects the testimony (1) of parties to the record, (2) of persons deficient in understanding, (3) of persons insensible to the obligations of an oath, (4) of persons pecuniarily interested in the matter in issue. It presumes the testimony of an accomplice to be worthy of but little credit. Self-interest, whether of a pecuniary, personal or professional nature, may conflict with the presumption that a witness will tell the exact truth on a particular occasion. Testimony to the genuineness of a will under which the witness inherits; testimony to the service rendered to the country by the political party in which the witness is a candidate for office; testimony to the efficacy of a medicine patented by the witness, or the superiority of the school of medicine in which the witness is a practitioner; testimonials as to the scholarship of students whom the witness has helped to educate, and in whose appointment he is interested, — are to be taken with a degree of allowance. A wool-grower might be too much interested in the tariff, a miner, in silver, a Baconizer, in his theory of the authorship of Shakespeare's plays, to give trustworthy evidence upon facts connected with those matters.

In some cases the validity of testimony depends especially on the intellectual character and equipment of the witness. While his honesty and desire to tell the truth may not vary, his thorough mastery of the subject, acquired by long study and experiment is of special importance. “On questions of science, art, trade or others of like kind, persons of skill, sometimes called experts, are called not only to

**Interested  
Witnesses.**

**Experts.**

testify to facts, but to give their opinions in evidence. Thus the opinions of physicians are constantly sought as to the cause of a disease or death or the consequences of wounds, or as to other circumstances best known to those skilled in the medical profession. But such evidence is usually admitted only on *facts proved*, not on the general merits of the case."

The statement, often made, that ordinary witnesses give testimony as to facts only, while experts testify to conclusions from facts proved, is hardly correct. The non-expert gives the results of processes of reasoning familiar to every-day life; the expert gives the results of a process of reasoning which can be mastered only by special scientists. Thus, in disputed matters of navigation, experts may prove general usage. A physician may testify as to injuries to the eye, as to the effect of arsenic, as to the sanity or insanity of a patient; a chemist may be called to testify as to whether certain stains are blood, as to the effect of certain poisons on the human system, as to the effect of a certain powder in removing ink marks; a surgeon may testify as to the cause, probable effects and nature of wounds; a botanist, as to the character and relations of different kinds of wood; a lawyer, as to court practice and customary fees; builders and carpenters, as to the safety of structures, and so on. But the specialty within which such evidence is given, must be exclusively that in which the expert witness is skilled.

The testimony of experts is to be carefully scrutinized. This necessity is recognized in the general employment of experts on both sides of a case. Not only a possible interest in one of the parties to the suit, and

inevitable friendliness toward the source of compensation, but his devotion to some theory, his **Care in Receiving.** jealousy of his reputation as a scientist, lawyer, or physician, his natural desire that his side of the case be established, — all this, granting him to be honest, casts suspicion on the accuracy of an expert's testimony.

“When expert testimony was first introduced, it was regarded with great respect. An expert, when called as a witness, was viewed as the representative of the science of which he was a professor, giving impartially its conclusions. Two conditions have combined to produce a material change in this relation. In the first place, it has been discovered that no expert, no matter how learned and incorrupt, speaks for his science as a whole. Few specialties are so small as not to be torn by factions ; and often, the smaller the specialty, the bitterer and more inflaming and distorting are the animosities by which these factions are possessed. Peculiarly is this the case in matters psychological, in which there is no hypothesis so monstrous that an expert cannot be found to swear to it, and to defend it with vehemence when off the stand. In the second place, the retaining of experts, by a fee portioned to the importance of this testimony, is now, in cases in which they are required, as customary as is retaining of lawyers. No court would take as authority the sworn statement of the law, given by counsel retained on a particular side, for the reason that the most high-minded men are so swayed by an employment of this kind as to lose the power of impartial judgment ; and so intense is this conviction that in every civilized community the reception by a judge of presents from suitors, visits him not only with disqualification but disgrace. Hence it is that, apart from the partisan temper more or less common to experts, their utterances, now that they have as a class, become the retained agents of parties, have lost all judicial authority, and are entitled only to the weight which a sound and cautious criticism would award to the testimony itself. In adjusting this criticism, a large



allowance must be made for the bias necessarily belonging to men retained to advocate a cause, who speak not as to *fact*, but as to *opinion*; who are selected on all moot questions, either from their prior advocacy of, or from their readiness to adopt the opinion wanted. In such instances we are inclined to adopt the strong language of Lord Campbell, that 'skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence.'"<sup>1</sup>

Expert testimony implies common honesty and special ability. Another kind of testimony, resembling this, but being based more upon sound judgment, is called authority.<sup>2</sup> Sometimes it is the expression of individual judgment, sometimes the combined judgment of many, and sometimes an established record accepted as ultimate proof by communities, sects and states. Expert testimony settles single cases; authority establishes facts or principles. No man, though he must act on them, can investigate and settle for himself all the questions arising in his mind, and whenever they arise. He therefore accepts the conclusions arrived at by others whose competence he trusts, or conclusions reached by himself on some other occasion.

Webster's opinions were received with great deference in the courts, as those of a high authority on constitutional law. "Whenever he gives emphasis to the personal pronoun, the reader feels that he had as much earned the right to make his opinion an authority, as he had earned the right to use the words he employs to express his ideas and sentiments. Thus at the celebrated *Smith Will Trial*, his antagonist, Mr. Choate, quoted a decision of Lord Chancellor Camden.

<sup>1</sup> Wharton, *Law of Evidence*, 425.    <sup>2</sup> Pages 289, 307.



In his reply, Webster argued against its validity as though it were merely a proposition laid down by Mr. Choate. 'But it is not mine, it is Lord Camden's,' was the instant retort. Webster paused for half a minute, and then, with his eye fixed on the presiding judge, he replied: 'Lord Camden was a great judge; he is respected by every American, for he was on our side in the Revolution; but, may it please your honor, *I* differ from my Lord Camden.' There was hardly a lawyer in the United States who could have made such a statement without exposing himself to ridicule; but it did not seem at all ridiculous when the 'I' stood for Daniel Webster."<sup>1</sup> This is an extreme case. In most of Webster's forensic speeches he frequently appeals to authority,<sup>2</sup> that is, to decisions of courts or instances of legislation, and to the Constitution itself.

Among orthodox Christians the Bible is the ultimate authority on matters of revealed religion; among the Mohammedans, the Koran; among the Mormons, the Book of Mormon, the Doctrine and Covenants and the Word of Wisdom. Among

**Instances of Authority.** lawyers, the Constitution, the decisions of courts, and the interpretations of learned jurists, constitute a body of authority. In medicine, in science, in education, authority is furnished by the opinions of those recognized as possessing the most marked ability and the sanest judgment, and arriving at conclusions by the most careful investigation or experiment. When there is a conflict of authorities, as there often is in every realm of thought and activity, a decision usually rests

<sup>1</sup> E. P. Whipple, *Introduction to Great Speeches*, lxiii.

<sup>2</sup> Pages 288, 306, 308, 313.

on the preponderance of authority, or a preponderance of probability from other sources.

The appeal to authority may be abused in several ways. What was authority in certain circumstances may not be such under other conditions.

Too much stress may be placed on single **Abuse of Authority.** opinions, or those may be cited as authorities on a special case, who are authorities only on the general principle or not at all.

Many other circumstances attending the testimony of a witness affect its value. These may induce him to be truthful or afford motives for evasion or perversion of truth. Unwilling testimony, given in the interests of truth and not under compulsion of **Unwilling Testimony.** any kind, — testimony to facts making against the witness's interest, prejudices, theories, desires, — is considered specially valuable. A witness testifying to the genuineness of a will that disinherits him; to acts which would help convict his best friend of a crime; to the ability, honesty and fitness for office of his rival; to the efficiency of an institution the patronage of which must lessen that of his own; to the cures wrought by a rival physician; to the justice of a government which has banished him, or of a chief who has dismissed him from office, — would be worthy of great credit. The testimony of Bible scholars who have always advocated the theory of special creation, that Genesis and geology are not inconsistent, and that the Bible account is on the whole favorable to evolution, is strong evidence. Had Joseph Knapp's confession<sup>1</sup> that he was a party to the murder of Captain White been put in evidence, as was

<sup>1</sup> Page 279.

intended, it would have had great weight notwithstanding its advantage<sup>1</sup> to himself. Lord North's measure looking toward the relief of the Americans from the imposition of taxes, was good evidence of the weakness of the position of parliament. The testimony of capitalists and employers to the many points of excellence in the various labor organizations, would be much more convincing than any evidence offered by members themselves.

A distinction is to be made between reluctant testimony and forced testimony. The validity of evidence given under compulsion is doubtful. Galileo under

torture was not "the devout astronomer."

**Forced**

**Testimony.**

Physical suffering or fear for one's self or for others nearly related, may overcome the scruples of the most conscientious. The fear of physical harm induced Abraham to tell the Egyptians that his wife was his sister. Not only the confessions of those accused of witchcraft, but much of the testimony against them, were secured by torture: subsequent history shows how false were both. Moral courage and physical endurance must have been possessed to an almost miraculous degree to prevent false testimony from witnesses subjected to the pains of the Spanish Inquisition. The evidence in favor of the truth of what is related in the Gospels, is greatly strengthened by the fact that no suffering could extort from the authors anything contradictory to those incidents.

Incidental or undesigned testimony is worthy of special consideration. A witness sometimes makes a statement, not thinking or not knowing its bearing on

<sup>1</sup> He was to secure immunity by turning State's evidence.

the case ; or a writer refers to something as if it were too well known to need more than an allusion. A boy whose direct testimony as to his foster-father's kindness could not be shaken, remembered a certain event "because it happened the morning his father knocked him down with a hammer." Those who fabricate a story take most pains with what seems to them most important, when, in fact, it is the minor details that mark most distinctly the true or the false. A single detail from fact may destroy the whole fabric of fiction. The nature and force of undesigned evidence is illustrated in an editorial comment on an incident of the Cronin murder trial :—

Undesigned  
Testimony.

"Maroney is reported as saying that 'there was not a member of the Clan-na-Gael but that wanted the murderers of Dr. Cronin discovered and punished'; and he added : 'The records of the Clan-na-Gael will show that I have always opposed murders, or assassinations, for revenge or for any cause whatever.' This is the most significant and startling confession yet made. That it was unpremeditated, and uttered while the speaker was apparently in a state of considerable excitement, if not alarm, is evident; and that adds to its importance. The inference is inevitable. If the records of the Clan-na-Gael show that Maroney 'always opposed murders and assassinations for revenge,' they must show that measures of murder and assassination were considered by the Clan-na-Gael, and were an essential part of its methods."<sup>1</sup>

Maroney's testimony illustrates, also, what is usually called a hurtful admission. He inadvertently admits that murder is a recognized method with the clan. The Vanderpool case<sup>2</sup> affords

Hurtful  
Admissions.

<sup>1</sup> *Chicago Herald*.

<sup>2</sup> "One year ago Field had a capital of \$7,000 ; Vanderpool \$2,300 ; bankers on a slender capital. They became dissatisfied.



another illustration. The prisoner admitted that he was in the bank with Field the last time the missing man was seen; that he forged the books; that he took up the carpet and burned it; that he scoured the floors and counters to efface bloody spots; that he wore a pair of Field's trousers because there was blood on his own; that he was unable to account for his whereabouts during the entire evening when Field's body was presumably

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Field commenced to draw out. Vanderpool distrusted him. He took his money home to keep it nights. He changed the combination lock. He claims Field as a defaulter. But two men swear the books were tampered with. Friend saw them Saturday; Ellis on Monday. They were changed, \$400 to \$1,400; \$700 to \$1,700. Here was the motive. He admitted the forgery. Without the forgeries, Field had a credit of \$3,-679.38 on Saturday night. The greed of gain and fear of ruin made the motive. It was Vanderpool. The opportunity was ample. They were alone; curtain down. The means was the hatchet. It was marked with blood and fitted the wound. Field was seen going in and was never seen out again alive. There were his shirt cuffs, his envelopes, letters, papers, pocket-book, books with forgeries, and *human blood*! Blood on the floor, on the carpet, on papers, on stairs; cracks of the floor were filled with blood, covered all over with fresh ink! Where is the carpet? Burned! Where are the clothes? Burned! By whom? Vanderpool! From the bank he went with Field's clothes on; in the bank were found the bloody spots; in the bank the charred remains of carpet, trousers and vest and shirt! At the bank, and cleaning up, was Vanderpool on Monday before the dawn. From all these facts but one inference is drawn: that Herbert Field was murdered in the bank, and George Vanderpool knew it, for he was there. He cleaned the blood; he cut the carpet; he scrubbed the floor; he burned the hay and carpet. The destruction of evidence of a crime is confession of crime."—*Modern Jury Trials*, 281.



being disposed of. These admissions formed an almost perfect chain of proof against him.

In the testimony of a witness, as in historical or fictitious narrative, an incidental allusion is often more effective than a direct statement or explanation. Confidence in the story of an historian, and verisimilitude in fiction are often weakened or destroyed by the writer's attempt to fortify statements and suggestions which if let pass would go unquestioned. A casual allusion, a chance reference, imply a common knowledge of that to which allusion or reference is made. Swift's allusion to Defoe as "the fellow that was pilloried, I have forgotten his name," testifies to a customary mode of punishment. Homer incidentally testifies to the practice of paying ransom to him whose friend one had slain, and mentions the amount of the ransom: —

**Incidental  
Testimony.**

"Meanwhile a multitude  
Was in the forum, where a strife went on, —  
Two men contending for a fine, the price  
Of one who had been slain. Before the crowd  
One claimed that he had paid the fine, and one  
Denied that aught had been received, and both  
Called for the sentence which should end the strife.  
The people clamored for both sides, for both  
Had eager friends; the heralds held the crowd  
In check; the elders, upon polished stones,  
Sat in a sacred circle. Each one took,  
In turn, a herald's sceptre in his hand,  
And, rising, gave his sentence. In the midst  
Two talents lay in gold, to be the meed  
Of him whose juster judgment should prevail."<sup>1</sup>

The practice of ransoming prisoners and slaves among eastern

<sup>1</sup> Bryant's *Homer's Iliad*, xviii. 621.

peoples is indicated in *Romola* by calling a certain precious stone "the ransom of a man."<sup>1</sup>

"The account given by Herodotus of Xerxes' cutting a canal through the Isthmus of Athos, which is ridiculed by Juvenal, is much more strongly attested by Thucydides in an incidental mention of a place 'near which some remains of the canal might be seen,' than if he had distinctly recorded his conviction of the truth of the narrative."<sup>2</sup>

Where there would be a presumption that if an institution had existed, an incident had occurred, a belief had been held, or the like, it would have been mentioned, the absence of such testimony is considered evidence of non-existence or non-occurrence. The absence of any direct mention of the doctrine of a future life in the writings of Moses, has been considered proof that the Jews did not believe in the immortality of the soul. This is called the testimony of silence, or negative testimony. The absence for several generations of any mention of Bacon as the author of Shakespeare's plays, is strong evidence against the Baconian theory of authorship. Nothing is said in the New Testament about the defective eyesight of any of the disciples; a certain artist, therefore, was probably indulging a fancy when he painted some of them wearing spectacles.<sup>3</sup> If a title of a book is not found in a certain publisher's catalogue, it is probably the publication of some other house. Property not named in a will along with other property, was probably not owned by the testator. A declaration in the presence of a party to a cause becomes evidence, as showing that the party, on hearing such a

<sup>1</sup> George Eliot, *Romola*, Chap. ix.

<sup>2</sup> Whately, *Rhetoric*, 84.

<sup>3</sup> Rubens, *Mary Anointing the Feet of Jesus*.

statement, did not deny its truth. If one is silent when he ought to have denied, the presumption of acquiescence arises. Failure to respond when summoned to defend a suit at law, is considered as confessing the claim. The absence from the college records of the name of a person who claims to have been a student or resident at the college, raises a strong presumption against his claim. This, according to Mr. Collins, is the case of Bolingbroke.

Burke argues that the absence of evidence to show the quarrel of the Colonies to be with the trade-laws, makes it necessary to assign some other cause for their resistance to England, — **Burke's Example.** as taxation. He affords other examples of argument from silence in the same speech: —

“We see the sense of the Crown, and the sense of parliament, on the productive nature of a *revenue by grant*. Now search the same journals for the produce of the *revenue by imposition*. Where is it? Let us know the volume and the page. What is the gross; what is the net produce? To what service is it applied? How have you appropriated its surplus? What! Can none of the many skillful index-makers that we are now employing find any trace of it? Well, let them and that rest together, But are the journals which say nothing of the revenue, as silent as to the discontent? Oh, no! a child may find it. It is the melancholy burthen and blot of every page.”<sup>1</sup>

Where there has been no opportunity for collusion, the independent testimony of several witnesses to the same essential facts, is much stronger than that of a single witness. They might all agree by accident; but this is less likely

**Concurrent  
Testimony.  
Discrepan-  
cies.**

<sup>1</sup> *Select Works*, I. 216.

than that they all tell the truth. Even if there has been an agreement as to what they are to say, some are likely to forget or to weaken under cross-examination, when telling a fabricated story, and so be detected. If upon comparing the testimony of different witnesses,<sup>1</sup> such grave discrepancies are found in essential matters that all cannot be telling the truth, then account must be taken of the powers, habits, intelligence and character of the different persons testifying.<sup>1</sup> There may be agreement in essential details and differences in minor matters, and these differences may, on the whole, strengthen the general probability; for under different circumstances, witnesses may see things from a different point of view, and with different powers of observation and interpretation. When the matter testified to consists of many details, it is hardly to be expected that several witnesses will agree in all minute particulars. Professor Greenleaf makes this clear in the following passage from his *Examination of the Testimony of the Four Evangelists*:—

“In the *third* place, as to their *number* and the *consistency* of their testimony. The character of their narratives is like that of all other true witnesses, containing, as Dr. Paley observes, substantial truth, under circumstantial variety. There is enough of discrepancy to show that there could have been no previous concert among them; and at the same time such substantial agreement as to show that they all were independent narrators of the same great transaction, as the events actually occurred. . . . The discrepancies between the narratives of the several evangelists, when carefully examined, will not be found sufficient to invalidate their testimony. Many seeming contradictions will prove, upon closer scrutiny, to be in substantial agreement; and it may be confidently asserted

<sup>1</sup> Page 44.



that there are none that will not yield, under fair and just criticism. If these different accounts of the same transactions were in strict verbal conformity with each other, the argument against their credibility would be much stronger. All that is asked for these witnesses is, that their testimony may be regarded as we regard the testimony of men in the ordinary affairs of life. This they are justly entitled to; and this no honorable adversary can refuse. . . . If the evidence of the evangelists is to be rejected because of a few discrepancies among them, we shall be obliged to discard that of many of the contemporaneous histories on which we are accustomed to rely. Dr. Paley has noticed the contradiction between Lord Clarendon and Burnet and others in regard to Lord Strafford's execution; the former stating that he was condemned to be hanged, which was done on the same day; and the latter all relating that on a Saturday he was sentenced to the block, and was beheaded on the following Monday. Another striking instance of discrepancy has since occurred, in the narratives of the different members of the royal family of France, of their flight from Paris to Varennes, in 1792. These narratives, ten in number, and by eye-witnesses and personal actors in the transactions they relate, contradict each other, some on trivial and some on more essential points, but in every case in a wonderful and inexplicable manner. Yet these contradictions do not, in the general public estimation, detract from the integrity of the narrators, nor from the credibility of their relations. In the points in which they agree, and which constitute the great body of their narratives, their testimony is, of course, not doubted; where they differ, we reconcile them as well as we may, and where this cannot be done at all, we follow that light which seems to us the clearest."<sup>1</sup>

A distinction sometimes made between direct and circumstantial evidence and between testimonial and indirect evidence, is confusing. The distinction should rather be between direct and indirect, and between testi-

<sup>1</sup> Quoted by Professor Genung.



monial and circumstantial, evidence ; for either testimonial or circumstantial evidence may be direct, and either may be indirect. Direct evidence is such as applies immediately to the case in dispute. Indirect evidence bears upon some fact or circumstance which in turn has a bearing upon the case in question. Testimonial evidence is that produced by human witnesses ; circumstantial evidence is such as comes from other sources. The superiority usually attributed to testimonial or direct evidence over circumstantial or indirect, is frequently overestimated.

The following passages from a scientific investigator, a juridical reasoner, and a writer of fiction, respectively, make clear the meaning and relative value of these kinds of evidence : —

“The evidence as to the occurrence of any event in past time may be ranged under two heads which, for convenience’ sake, I will speak of as testimonial evidence and circumstantial evidence. By testimonial evidence I mean human testimony ; and by circumstantial evidence I mean evidence which is not human testimony. Let me illustrate by a familiar example what I understand by these two kinds of evidence, and what is to be said respecting their value.

“Suppose that a man tells you that he saw a person strike another and kill him ; that is testimonial evidence of the fact of murder. But it is possible to have circumstantial evidence of the fact of murder ; that is to say, you may find a man dying with a wound upon his head having exactly the form and character of the wound which is made by an axe, and, with due care in taking surrounding circumstances into account, you may conclude with the utmost certainty that the man has been murdered ; that his death is the consequence of a blow inflicted by another man with that implement. We are very much in the

**Testimonial  
and Circum-  
stantial Evi-  
dence.  
Huxley.**

habit of considering circumstantial evidence as of less value than testimonial evidence; and it may be that, where the circumstances are not perfectly clear and intelligible, it is a dangerous and unsafe kind of evidence; but it must not be forgotten that, in many cases, circumstantial is quite as conclusive as testimonial evidence, and that, not unfrequently, it is a great deal weightier than testimonial evidence. For example, take the case to which I referred just now. The circumstantial evidence may be better and more convincing than the testimonial evidence; for it may be impossible, under the conditions that I have defined, to suppose that the man met his death from any cause but the violent blow of an axe wielded by another man. The circumstantial evidence in favor of a murder having been committed, in that case, is as complete and as convincing as evidence can be. It is evidence which is open to no doubt and to no falsification. But the testimony of a witness is open to multitudinous doubts. He may have been mistaken. He may have been actuated by malice. It has constantly happened that even an accurate man has declared that a thing has happened in this, or that, or the other way, when a careful analysis of the circumstantial evidence has shown that it did not happen in that way, but in some other way.”<sup>1</sup>

“The distinction, then, between direct [testimonial] and circumstantial evidence, is this. Direct or positive evidence is when a witness can be called to testify to the precise fact which is the subject of the issue in trial; that is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever may be the kind or force of the evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death, and of course no one can be called to testify to it,—is it wholly unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character as to warrant a firm belief of the fact, quite as strong and certain as that on

<sup>1</sup> Huxley's *American Addresses*, 11.

which discreet men are accustomed to act in relation to their most important concerns. . . .

“Each of these modes of proof has its advantages and disadvantages ; it is not easy to compare their relative value. The advantage of positive evidence is, that you have the direct testimony of a witness to the fact to be proved, who, if he speaks the truth, saw it done ; and the only question is, whether he is entitled to belief ? The disadvantage is, that the witness may be false and corrupt, and the case may not afford the means of detecting his falsehood.

“But in a case of circumstantial evidence where no witness can testify directly to the fact to be proved, you arrive at it by a series of other facts, which by experience we have found so associated with the fact in question, as in the relation of cause and effect, that they lead to a satisfactory and certain conclusion ; as when foot-prints are discovered after a recent snow, it is certain that some animated being has passed over the snow since it fell ; and, from the form and number of the foot-prints, it can be determined with equal certainty, whether it was a man, a bird, or a quadruped. Circumstantial evidence, therefore, is founded on experience and observed facts and coincidences, establishing a connection between the known and proved facts and the fact sought to be proved. The advantages are, that, as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose. The disadvantages are, that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them ; in doing which, they may be led by prejudice or partiality, or by want of due deliberation and sobriety of judgment, to make hasty and false deductions ; a source of error not existing in the consideration of positive evidence.”<sup>1</sup>

“It is true of circumstantial evidence that without some direct fact on which it depends it is worthless. If we could show you that the prisoner desired the death of this girl ; that

<sup>1</sup> Judge Shaw, quoted by Professor A. S. Hill.

he profited by her death ; that he had a secret in connection with her child which he can keep from the world better, now that she is dead ; that she died under circumstances which made the attending physician suspect morphine poisoning ; that as soon as the suspicion was announced, the prisoner mysteriously disappeared, and remained in hiding for several days ; that he had the opportunity to administer the poison ; that he understood the working of the drug ; and other circumstances of a similar nature, the argument would be entirely circumstantial. All this might be true, and the man might be innocent. But, selecting from this array of suspicious facts, the one which indicates morphine as the drug employed, and then add to it the fact that expert chemists actually find morphine in the tissues of the body, and you see, gentlemen, that at once this single bit of direct evidence gives substantial form to the whole. The circumstantial is strengthened by the direct, just as the direct is made important by the circumstantial. The mere finding of poison in a body, though direct evidence as to the cause of death, neither convicts the assassin, nor even positively indicates that a murder has been committed. The poison might have reached the victim by accident. But consider the attendant circumstances, and then we see that a definite conclusion is inevitable. It is from the circumstantial evidence only that we can reach the true meaning of what the direct testimony teaches. So we come at last to find that evidence is evidence, and that all evidence is important and may prove convincing.”<sup>1</sup>

On the other hand, there is danger of giving too much weight to circumstantial evidence. Circumstances must be not only indicative of his guilt but inconsistent with his innocence, to convict the accused. “In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and

**Circumstances Overestimated.**

<sup>1</sup> R. Ottolengui, *A Modern Wizard*, 160.



incapable of explanation upon any other hypothesis than that of his guilt.”<sup>1</sup>

“Circumstantial evidence, I need hardly tell you, is most delusive in its character. Analyzed, what do we find it to be? It has been truly argued that there is, and can be, no cause without an effect. In considering circumstantial evidence, the mind of the investigator is presented with the relation of a number of facts, or effects, and he is asked to deduce that they are all attributable to a stated cause. For example, a pedler is known to have started out upon a lonely road, and to have in his pack certain wares, a given amount of money in specified coins and bills, wearing a watch and chain, and he is subsequently found murdered, by the wayside. Later, a tramp is arrested upon whose person is found the exact missing money, and many of the articles which were known to have been in the pack. He is charged with the crime, and the evidence against him is circumstantial. His possession of these articles is an effect, which is said to be attributable to a cause, to wit, the killing of the pedler. But strong as such evidence may appear, as I have said, it is delusive. For just as the prosecution ask you to believe that a number of effects are traceable to a single cause, the crime charged, so also it is possible that all of the effects may have resulted from various causes. Thus in the case cited, the tramp may have been a thief, and may have stolen the articles from the pedler after some other person had killed him. And if it could be shown that the watch and chain were missing, and yet were not found upon the tramp, that would be as good evidence in his favor, as the other facts are against him. So that in circumstantial evidence the chain must be complete. If a single link be missing, or have a flaw, the argument is inconclusive, and a doubt is created, the benefit of which must invariably be given in favor of the accused.”<sup>2</sup>

The character of its contents has much to do with the credibility of evidence. What is probable on the

<sup>1</sup> Judge Porter, *Babcock Conspiracy Case*.

<sup>2</sup> Ottolengui, *Modern Wizard*, 170.

face of it, what squares with ordinary human experience, what is consistent with other facts already known in the case, is readily accepted. But if evidence carries improbability on its face, if it proposes strange, unusual, unaccountable or inconsistent circumstances, the thoughtful reasoner at once rejects it. The accounts in the Bible of Jonah's experience with the whale, of Joshua's causing the sun to stand still, of the raising of Lazarus, and of miracles in general, are questioned by many because these occurrences are so far removed from common experience. For the same reason the revelations to the latter-day saints find slow acceptance. On the other hand, Defoe's account of the plague, though fictitious, is still occasionally quoted as authentic, because of its "naturalness."

**Improbable  
and Incredible  
Evidence.**

The poet, Story, makes a Roman lawyer argue that Judas was "a rash and visionary man" rather than a base criminal, since it does not accord with human experience that one should sell his Lord for so small a sum, nor that a criminal should have been chosen to Judas's place among the twelve; nor that a criminal could have hidden his character so long; nor that he would have flung back the bribe, repenting of his act, when he had the approval of his race; nor that he should go at once and hang himself in horror of what he had done.

Evidence, to be convincing, must be consistent in all its parts as well as with facts otherwise known. A witness injures his credibility as soon as one part of his story fails to tally with any other part. If one part contradicts another,

**Inconsistent  
and Contradictory  
Testimony.**

one or all must be rejected. Of two contradictory statements, one must be false.

There are three ways of destroying the credibility of a witness: (1) by assailing his reputation for veracity, and showing through other testimony that he has made different statements at different times; (2) **Destroying Credibility.** by proving a different state of facts through different witnesses; (3) by making him contradict himself on cross-examination. The third is the most effective. It obviates all question as to reliability of other witnesses. Lawyers have three purposes in cross-examination: (1) to elicit more truth; (2) to test the witness's truthfulness by endeavoring to confuse him and make him contradict himself; (3) to lay a foundation for impeachment. Whether any of these ends are reached or not depends on the disposition of the witness, and the manner of conducting the examination. Whatever the purpose, a witness is entitled to fair treatment. Judge Walker says<sup>1</sup>:—

“Above all things, let counsel who aim at truth, avoid the manner of examination called brow-beating. There are instances warranting sharp and severe treatment of a witness, but they are rare and exceptional. Courtesy is far more successful than harshness. It pays to consider a witness a gentleman.”<sup>2</sup>

To be of account all new evidence must be in harmony with what is already known in the case. Hence the value of corroborating testimony and of concurrent circumstances. A distinction is to be made here be-

<sup>1</sup> *Modern Jury Trials*, 217.

<sup>2</sup> See the way in which Erskine sifts the testimony of the witness, Hay, on the trial of Lord George Gordon, *Goodrich's British Eloquence*, 664.

tween what is actually known, that is, well-established facts, and what is generally accepted theory. The apparent discrepancies between new discoveries and what is thought to be already established, often annoys the most careful scientific investigators. It seemed for a time that one of Pasteur's theories would not conform to what was considered already known : —

“Our tendency to select for observation the details which support our existing theories, is so common that it hardly needs illustration. But that a wrong selection may be made even when our object is to attack a theory, the following example will show. When Pasteur was investigating the causes of splenic fever, he adopted very early in the inquiry the theory of Davaine, that the disease was due to the presence of a certain parasite in the blood, and that consequently the same disease, showing the presence of the same parasite, could be communicated to other animals by inoculation. On the other side, two professors to whom the theory did not commend itself brought forward, as a triumphant refutation of it, what seemed at first a plainly contradictory fact. They had inoculated some rabbits with the blood of an animal which had died of splenic fever, and though the rabbits had died very rapidly no trace of the expected parasite had been found in them either before or after their death. Moreover their blood again had been used to inoculate other rabbits, and these too had died in the same rapid manner, but with the same disregard of what the theory further required. Davaine at once disputed the *fact*. That is to say, he insisted that the two professors must have used blood which was not properly infected with splenic fever, but with some other disease. The professors, however, were equally certain of their facts ; they had got their materials from the best available source, namely, from the director of an establishment where numerous animals which had died of splenic fever were constantly brought. But in order to convince the stubborn theorist they tried the experi-

Apparently  
Conflicting  
Circum-  
stances.

Pasteur.



ment again, this time obtaining their materials from the most experienced veterinary surgeon in the neighborhood. Exactly the same result followed, and the facts certainly here appeared to be too strong for the theory.

"It was some years later when the real weakness of the facts themselves came to light. Davaine's theory had meanwhile been enlarged and improved by the discovery that if the blood used for inoculation has already begun to putrefy, the animals inoculated will die by a form of blood-poisoning, quicker in its operation than splenic fever, and too quick to allow the true splenic fever parasites time to multiply. This suggested a new inquiry into the professors' experiments, and it was found that the blood used by them, although certainly taken from cases of splenic fever, had not been sufficiently fresh. So that the fact on which they had relied as contradicting the theory turned out to be wrongly—*i.e.*, incompletely—described. Through merely overlooking the detail that the animals whose blood they used had been dead some twenty-four hours, their description of it as 'splenic fever blood' became essentially false."<sup>1</sup>

The character of the proposition on which evidence is adduced, must modify somewhat its validity. No evidence of any force could be used to show that the universe has always existed in its present state. Testimonial evidence would have little force to sustain what Huxley calls the "Miltonic" theory. Even on what is called the "Evolution" theory there are two classes of evidence between which there seems to be an irreconcilable conflict.

"I have not the slightest means of guessing whether it took a million of years, or ten millions, or a hundred millions, or a thousand millions to give rise to that series of changes. A biologist has no means of

**Character of  
Proposition.**

**Irreconcilable  
Conflicts.  
Huxley.**

<sup>1</sup> Sidgwick, *Process of Argument*, 94.

arriving at any conclusion as to the amount of time which may be needed for a certain quantity of organic change. He takes his time from the geologist. The geologist, considering the rate at which deposits are formed and the rate at which denudation goes on upon the surface of the earth, arrives at more or less justifiable conclusions as to the time which is required for the deposit of a certain thickness of rocks ; and if he tells me that the tertiary formations required 500,000,000 years for their deposit, I suppose he has good ground for what he says, and I take that as a measure of the duration of the evolution of the horse from the *Orohippus* up to its present condition. And, if he is right, undoubtedly evolution is a very slow process, and requires a great deal of time. But suppose, now, that an astronomer or a physicist—for instance, my friend Sir William Thomson—tells me that my geological authority is quite wrong ; and that he has weighty evidence to show that life could not possibly have existed upon the surface of the earth 500,000,000 years ago, because the earth would have then been too hot to allow of life, my reply is : ‘ That is not my affair ; settle that with the geologist, and when you have come to an agreement among yourselves I will adopt your conclusion.’ We take our time from the geologists and physicists ; and it is monstrous that, having taken our time from the physical philosopher’s clock, the physical philosopher should turn round upon us, and say we are too fast or too slow. What we desire to know is, is it a fact that evolution took place ? As to the amount of time which evolution may have occupied, we are in the hands of the physicist and the astronomer, whose business it is to deal with those questions.”<sup>1</sup>

The uncontradicted testimony of a single witness in court, unless absurd on its face or lacking all probability from its very nature, may be so valid as to determine a case. But the unsupported assertion of an advocate or other reasoner, unless he is an accepted authority, will have little weight.

**Bare  
Assertion.**

<sup>1</sup> Huxley, *American Addresses*, 92.

When a clergyman says, "No editor will tell the truth unless he is compelled to," the critical hearer demands evidence. His experience does not teach him that one class of men are liars above all others. He says with Huxley: "For my part, I have no prejudice one way or the other. If there is evidence in favor of this view, I am burdened by no theoretical difficulties in the way of accepting it; but there must be evidence. Scientific men get an awkward habit—no, I won't call it that, for it is a valuable habit—of believing nothing unless there is evidence for it; and they have a way of looking upon belief which is not based upon evidence, not only as illogical but as immoral."<sup>1</sup>

**Political  
Writing.**

How little mere assertion proves, and how it differs from evidence or reasoning upon evidence, is shown in the following notice of a volume on proportional representation:—

"The benefits to be expected from the adoption of proportional representation are, if its advocates are to be believed, of the most exalted kind. They assert that it would make the voters independent of party machinery, put an end to gerrymandering and the spoils system, raise the personal character of legislators, and purify the whole atmosphere of politics. Representative government as it now exists, they say, is a failure and only the adoption of proportional representation will avail to save it. When, however, we inquire on what these rosy expectations are founded, we find that, except as to the abolition of gerrymandering, they have no foundation at all. The advocates of the proposed system tell us that it would insure us representatives of high moral and intellectual character; but we look in vain for a connection between their assertions and their conclusion. With the same voters to make the choice, and the same men to choose from, how can a different grouping of the voters secure a wiser choice?"<sup>2</sup>

<sup>1</sup> *American Addresses*, 21.

<sup>2</sup> *The Critic*.

## IV. CLASSES OF ARGUMENTS.

## 1. ON THE BASIS OF FORCE.

An argument is any proof, — fact, testimony, circumstance, — put forward to induce a belief in the truth or falsity of a proposition. Arguments are classified on many bases, the classes thus formed necessarily crossing each other. On the basis of their force, arguments may be divided into probable, sometimes called moral, and certain, also called demonstrative. A probable argument raises some degree, the higher the better, of likelihood or probability. A certain argument establishes the proposition beyond a doubt. In mathematics and the physical sciences, absolute certainty or demonstration is possible. In social science, in legal and political as well as in practical affairs, arguments vary in force from a slight degree of probability to moral certainty. Absolute certainty is such that the opposite is inconceivable. It excludes all doubt. Moral certainty is not absolute certainty. “It is not the exclusion of all doubt. It is that certainty which convinces and directs the understanding and satisfies the reason and judgment of those who act conscientiously upon it; that leads us to act in the gravest concerns of life in our own affairs.”<sup>1</sup>

The following passages will illustrate the varying degrees of probability in the inferences from observed facts. A hat has been found, large, fine in quality, three years out of date, covered with closet dust, spotted with grease, the lining

**Definition.**  
**Probable and**  
**Demonstra-**  
**tive.**

**Slight**  
**Probability.**

<sup>1</sup> *Modern Jury Trials*, 281.



moist and oily, and having bits of gray hair adhering to it :—

“Holmes picked up the hat and looked at it. . . . ‘The owner was highly intellectual, fairly well to do within the last three years, but has fallen upon evil days ; had foresight, but less now than formerly ; . . . is under some evil influence, probably strong drink ; this may account for his wife’s ceasing to love him ; he has retained some degree of self-respect, leads a sedentary life, goes out little, is out of training, is middle-aged ; has had his hair cut recently, anoints it with lime cream ; and it is not probable that he has his house lighted with gas.’”<sup>1</sup>

The inferences in the preceding paragraph are by no means the only way of accounting for the condition of the hat ; there is, then, little force in the argument.

In the next passage the arguing is more forcible, but the inferences are not absolutely certain. Holmes is investigating a murder case, and is shown the place where the body of the murdered man was found ; the fatal wound has been described to him. He reasons thus<sup>2</sup> :—

“These long strides show that the murderer was tall ; the blow being on the back of the victim’s head on the left side, shows the murderer to be left handed ; the slight prints of the right foot in the turf and soft earth, show him to be lame on that foot ; these prints show that he wears thick-soled hunting shoes with square toes ; this cigar stub and the wrapper near it show that he smokes Indian cigars ; the end of the cigar shows his knife to be dull ; the ashes on the bark of this tree and the tracks at its foot, indicate that the murderer stood here and smoked for some time, probably while the son and father were quarreling ; he uses a cigar-holder, for the stub has not been wet ; this stone under which the grass is only slightly pressed, and which corresponds to the wound, was the deadly weapon ;

<sup>1</sup> Conan Doyle, *Adventures of the Blue Carbuncle*.

<sup>2</sup> See Sign, Page 173.

the murderer is an Australian, for he answered the Australian call, 'Cooee!' He wears a gray cloak—the gray thing which the son testifies to having seen on the sward.”<sup>1</sup>

In his *Origin of Species*<sup>2</sup> Darwin presents arguments leading to practical certainty that beauty of form and beauty of color existed prior to the creation of man, and are therefore independent of man's gratification. The same practical certainty is found in the following argument that radiant heat and radiant light are the same thing, or only variations of the same thing, in Tait's *Recent Advances*:—

Practical  
Certainty.

“The radiant heat from the sun goes along with the light from the sun, and when you shut one off,—put a screen so as to intercept the one,—the other is intercepted at the same time. In the case of a solar eclipse, you have the sun's heat as long as you see the smallest portion of the sun's disk. The instant the last portion of the disk is obscured, the heat disappears with the light. That shows that the heat and the light take not only the same course, but also the same time to come to us. If the one lagged ever so little behind the other,—if the heat disappeared sooner than the light, or the light sooner than the heat,—it would show that though they both moved in straight lines, the one moved faster than the other; but the result of observation is that we find so far as our most delicate measurements show, that heat and light are simultaneously intercepted.”<sup>3</sup>

To know the difference between arguments that establish a proposition with certainty, and those that establish it with varying degrees of probability, and to estimate correctly the degree of probability, is of prime importance. In practical affairs, in matters affecting the ownership of great estates and the lives of those accused of crime, men are guided almost entirely by inferences from facts.

Importance  
of Knowing  
Force.

<sup>1</sup> Conan Doyle, *Boscombe Valley Mystery*.

<sup>2</sup> Chap. vi.

<sup>3</sup> Lecture viii, 206.

"You cannot walk a block without being convinced through circumstantial evidence. You cannot live a day of your life without relying on circumstantial evidence. You got up yesterday morning and saw snow. It was as surely snow as if you had seen it fall. You knew it had fallen. It is here a fact. You see in it the track of a cat. You know a cat has crossed it in that direction. A man drives by with a horse covered with foam. You know he has driven rapidly. You see that the horse is shod. You did not see the shoe nailed on, but you know that it is the work of a man."<sup>1</sup>

Facts affording arguments practically certain to one class of men or at one time, have much less force as arguments to other men or at another time. It would be difficult to fix a criterion by which the force of all arguments could be measured by all men at all times. When the mind is satisfied that there is sufficient proof, "hypothesis"<sup>2</sup> becomes induction. This point will be reached much more readily by some minds than by others. Professor Huxley regarded the proposition that modern horses are descended from small five-toed progenitors as demonstratively established, while many others still looked upon evolution as a very slenderly supported hypothesis."<sup>3</sup> Macaulay thought that he had conclusively proved the identity of Junius with Sir Philip Francis. The facts and hypotheses are thus stated by Wharton<sup>4</sup>: —

"The number of hypotheses increases with the complication of the case. If, for instance, Sir Philip Francis's title to the authorship of Junius's letters is under investigation, we have a series of concentric hypotheses each of which is pertinent and the innermost of which closely surrounds the point of identity. It is pertinent to argue that the author of the letters during the Chatham and Grafton ministries, was familiar with English

<sup>1</sup> *Modern Jury Trials*, 290.

<sup>2</sup> Pages 113, 129.

<sup>3</sup> Ballantine, *Inductive Logic*, 117.

<sup>4</sup> *Law of Evidence*, 33.

public life; that he possessed a practiced pen; that he was cognizant of the traditions of the war office; that his animosity to Lord Mansfield and his attachment to Lord Chatham were strong; that he had cogent motives for concealing, both at the particular period and for years afterwards; that he ceased to write about 1773; that his handwriting had certain marked peculiarities. Each of these hypotheses being pertinent, it is relevant to prove that Sir Philip Francis was, during the period when the Junius letters appeared, familiar with English public life; that his style was polished, vigorous and not unlike that of Junius; that he had been some time a clerk in the war office; that his political relations repelled him from Lord Mansfield, and connected him with Lord Chatham; that to him discovery would be political ruin; that at about the time the Junius letters closed, he left the country; that his handwriting was strikingly like that of Junius."

In spite of these facts, however, it is not now generally believed by those who have investigated the matter, that Francis wrote *The Letters of Junius*.

## 2. BASIS OF USE.

On the basis of their use, arguments are direct or indirect.<sup>1</sup> Direct arguments aim straight at a definite and desired conclusion. They are positive, candid, apparent. By them the reasoner seeks openly and *in propria*

<sup>1</sup> The division of proofs into direct and indirect is so important that I wish to suggest for class work the following classification which contains its own explanation:

(A) Direct proofs, proofs for one's own proposition (these may be *a priori*, by sign, by example or by analogy).

(B) Indirect proofs (of one's own proposition):

1. A direct overthrow of the opponent's proposition; that is, a proof of any of the four sorts against the opponent's proposition; or
2. An indirect overthrow of the opponent's proposition; that is, the refuting of a proof offered (or imagined to be offered); (a) in favor of the opponent's proposition, or (b) against one's own proposition. — *Educational Review*, October, 1897, 288.



*persona* to establish a proposition or refute it. He is not masked. His purpose is not concealed.

**Direct.**

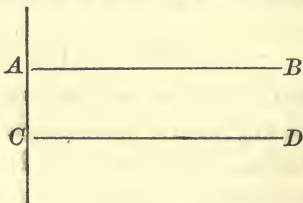
His meaning is unequivocal. His process is constructive. The great body of argumentation is of this class, and need not be further discussed as such.<sup>1</sup>

Indirect arguments are used most frequently in refutation.<sup>2</sup> They aim at building up one thing by overthrowing another. They usually show the truth of a

**Indirect.** proposition by exhibiting in some way the inconsistency, absurdity or unreasonableness of  
*Reductio ad Absurdum.*

an opposite conclusion. They prove truth by disproving error. Of the numerous kinds of indirect arguments, the *reductio ad absurdum* is one of the most common. There are several methods of "reducing to the absurd," one of which is familiar to students of geometry:

"Two perpendiculars to the same straight line are parallel.



"Let the lines  $AB$  and  $CD$  be perpendicular to  $AC$ .

"To prove  $AB$  and  $CD$  parallel.

"If  $AB$  and  $CD$  are not parallel, they will meet in some point if sufficiently produced.

"We should then have two perpendiculars from the same point to  $AC$ , which is impossible.

"[From a given point without a straight line but one perpendicular can be drawn to the line.]

"Therefore,  $AB$  and  $CD$  cannot meet and are parallel."

<sup>1</sup> See Antecedent Probability, Example and Analogy, and Sign, pages 124, 146, 158, 173.

<sup>2</sup> Page 206.

Here the conclusions are reduced to two, one of which is proved absurd, thus leaving the other to stand as established.

The absurdity of the principle, "Of two evils choose the lesser," is shown by applying the same kind of reasoning by which the principle is supported in one case, to a different case in which the conclusion reached is manifestly absurd:—

Sherman.

"Mr. Sherman is opposed to inflation, and yet reported this bill authorizing the purchase of 4,500,000 ounces of silver every month; how does he reconcile his action with his professions? By showing that a large majority of the Senate favored free coinage, that it was feared that the House might yield and agree to it, that if a bill for free coinage should have passed both houses, Harrison might have signed it, and that free coinage was a worse evil than the silver-purchase scheme. Consequently, Mr. Sherman did what he could to pass the latter.

"How can a man with any real convictions on the subject advocate and father a bill which he holds to be radically vicious, because something worse is proposed by some one else? On this principle the candid patriot may advocate anything he pleases, provided he announces that he is opposed to it. Suppose the majority of the House are in favor of an act for the immediate murder of all adult Chinamen or Indians, while the Senate is in favor of killing all the children as well. The first is obviously the lesser evil; but Mr. Sherman would hardly like to report it from a conference committee and favor its adoption. On these principles we might be called upon to listen to arguments in favor of an act legalizing burglary as a lesser evil than an act permitting murder, or of an act authorizing larceny as preferable on the whole to burglary. The matter is clear enough where acts universally recognized as wicked are concerned."<sup>1</sup>

If a conclusion is true the propositions which support

<sup>1</sup> *The Nation*.

it must also be true. The argument which like the last example, may be met by the *reductio ad absurdum*, proves too much. It proves its own conclu-

**Proving too Much.** sion and one or more others which are absurd.

It thus suggests in itself the means of its own overthrow; for proving the absurdity of the general proposition upon which the conclusion rests, destroys the conclusion. *The Educational Review* thus answers the statement, "English literature cannot be taught":—

"Having in mind the confusion between teaching and examination which has befogged the whole discussion of the question in England, Mr. E. A. Freeman, the historian, declared against any university teaching of English literature. Mr. Collins quotes Mr. Freeman as writing, 'there are many things fit for a man's personal study which are not fit for university examinations. One of these is literature.' That literature 'cultivates the taste, educates the sympathies, enlarges the mind,' Mr. Freeman makes no attempt to deny; 'only, we cannot examine in tastes and sympathies,' is his reply. Now, if this proves anything, it proves too much. It is an argument, not against teaching English literature only, but against teaching Latin literature and Greek literature. But Mr. Freeman and those who hold with him have not yet suggested that the universities of Oxford and Cambridge should give up the teaching of Greek literature.

"There is indeed a difference between the teaching of English literature and the teaching of Greek literature. The texts of the great Greek authors, like the texts of the great English authors, may serve for grammatical instruction and for mere linguistic drill; or they may, the ancient as well as the modern, be used to cultivate the taste, educate the sympathy and enlarge the mind."

Thrown into syllogistic<sup>1</sup> form this would be:—

<sup>1</sup> Page 89.

1. Whatever has to do with tastes and sympathies cannot be examined upon : —

English literature has to do with tastes and sympathies ;  
English literature cannot be examined upon.

2. Whatever cannot be examined upon, cannot be taught : —

English literature cannot be examined upon ;  
English literature cannot be taught.

But what is said of English literature may be said of Greek, Roman, or any other kind of literature, or indeed of any form of art ; and to say that no art can be taught, is manifestly absurd.

Other forms of indirect argument depend for their force on the principle of alternative. A subject may so present itself that two or more conclusions are possible, only one of which is just. If these conclusions can be shown definitely to be the **Principle of Alternative.** only ones, the falseness of all but one may be proved, and the truth of this be left to assert itself. Hepburn uses the following example where there are two alternatives<sup>1</sup> : —

“ If the thesis is, ‘ Man is a free agent,’ then the antithesis is, ‘ Man is not a free agent.’ To prove the thesis directly, we should have to lay down positive arguments ; as, the consciousness of the power of contrary choice, the consciousness of responsibility. The indirect proof would take some such form as this : ‘ Man is either free or he is not free. Let us assume that he is not free. If he is not free, he cannot, in cases of conflicting motives, choose, but must blindly follow one of the impulses. But we know from consciousness that he can decide between conflicting motives ; therefore it is false that he is not free. He must, therefore, be free.’ ”<sup>2</sup>

In his *Speech on Conciliation* Burke affords a good example of indirect arguments where there are four

<sup>1</sup> See also Page 83.

<sup>2</sup> *English Composition*, 191.



Three Alternatives or more.

alternatives, that is, four possibilities. He dismisses one as already rejected, and then overthrows two as a necessary clearing of the ground to establish the last:—

“But, Sir, in wishing to put an end to pernicious experiments, I do not mean to preclude the fullest inquiry. Far from it. Far from deciding on a sudden or partial view, I would patiently go round and round the subject, and survey it minutely in every possible aspect. Sir, if I were capable of engaging you to an equal attention, I would state that, as far as I am capable of discerning, there are but three ways of proceeding relative to this stubborn spirit which prevails in your Colonies, and disturbs your government. These are,—to change that spirit, as inconvenient, by removing the causes ; to prosecute it as criminal ; or to comply with it as necessary. I would not be guilty of an imperfect enumeration ; I can think of but these three. Another has indeed been started,—that of giving up the Colonies ; but it met so slight a reception that I do not think myself obliged to dwell a great while upon it. It is nothing but a little sally of anger, like the frowardness of peevish children, who, when they cannot get all they would have, are resolved to take nothing.”<sup>1</sup>

Burke’s treatment is broad, comprehensive and effective. He discusses thoroughly, and impartially the first two alternatives, showing them impractical or impossible:—

“If then, the removal of the causes of this spirit of American liberty be for the greater part, or rather entirely, impracticable ; if the ideas of criminal process be inapplicable,—or if applicable, are in the highest degree inexpedient ; what way yet remains ? No way is open but the third and last,—to comply with the American spirit as necessary ; or, if you please, to submit to it as a necessary evil.”<sup>2</sup>

Then by direct argument he strengthens the conclu-

<sup>1</sup> *Select Works*, I. 187.

<sup>2</sup> *Ibid*, 195.

sion thus reached indirectly, and insists that the third plan is both practicable and expedient.

This method, where there are several alternatives, is allied to the Method of Residues,<sup>1</sup> and is very common in scientific argumentation. Huxley uses it in the introductory lecture on evolution. He says there are but three hypotheses to account for the order of nature, each of which he carefully explains. Then, after showing why the first two cannot be maintained, he proceeds with positive arguments in favor of the third, the theory of evolution. The method must be used with care. All possible theories must be enumerated, and this necessitates an exhaustive analysis of the subject. Convincing reasons must be given for the rejection of all hypotheses but one. Then, lest there be a possible hypothesis omitted or a gap be left in the reasoning, direct proofs must be given to confirm the conclusion reached by indirect arguments.

Care Needed.

By the destructive dilemma a proposition to be refuted is reduced to alternatives. The arguer then shows that the one alternative is not tenable, and then that the other is not, so that the case fails.

The alternatives are called the horns of the dilemma. If the alternatives are correctly taken and the premises are sustained, the dilemma is unanswerable, and he against whom it is used must abandon his position. The dilemma is usually destructive. It can be used, however, to sustain, directly or indirectly, but is very liable to fallacy; for two alternatives seldom exhaust all possible cases.

Destructive  
Dilemma.

Victor Hugo confronts Javert, a police inspector, with this dilemma: Jean Valjean, an escaped convict, had spared Javert's life. Javert must decide whether he can now honorably re-arrest the convict, and subject him to capital punishment: —

“What should he do now? Give up Jean Valjean? That would be wrong. Leave Jean Valjean free? That would be wrong. In the first case the man of authority would fall lower than the man of the galley; in the second, the convict rose higher than the law and set his foot upon it; in both cases, dishonor to Javert. In every case that was open to him, there was a fall.”<sup>1</sup>

Burke meets Lord North's proposition to allow the Colonies to raise their quota of revenue in their own way, with this dilemma: —

“Let it also be considered that, either in the present confusion you settle a permanent contingent, which will and must be trifling, and then you have no effectual revenue; or you change the quota at every exigency, and then on every new repartition you will have a new quarrel.”<sup>2</sup>

In either case the trouble with the Colonies will continue.

Huxley uses the dilemma to prove that the plants which, according to the “Miltonic” hypothesis, were created the third day, were not different from such plants as now live; for “if they were different, either the existing plants have been the result of a separate origination since that described by Milton, of which we have no record, nor any ground for supposition that such an occurrence has taken place; or else they have arisen by a process of evolution from the original stocks.”<sup>3</sup> He uses the dilemma again, to show that all varieties of fishes

**Dilemma in  
Huxley's  
Lectures.**

<sup>1</sup> *Les Miserables*.

<sup>3</sup> *American Addresses*, 22.

<sup>2</sup> *Select Works*, I. 227.

and the great whales and the like, could not have made their appearance on the fifth day of creation ; if this were true “ we ought to find the remains of these animals in older rocks—in those which were deposited before the carboniferous epoch. Fishes we do find in considerable number and variety ; but the great whales are absent and the fishes are not such as now live. Not one solitary species of fish now in existence is to be found in the Devonian or Silurian formations. Hence we are introduced afresh to the dilemma which I have already placed before you. Either the animals which came into existence on the fifth day were not such as are found at present, are not the direct and immediate ancestors of those which now exist ; in which case either fresh creations must have occurred of which nothing is said ; or a process of evolution must have occurred ; or else the whole story must be given up, as not only devoid of any circumstantial evidence, but contrary to such evidence as exists.”<sup>1</sup>

The dilemma is specially liable to be fallacious. If in order to prove that stimulus is useless to students, it is argued : “ If a student likes his studies he needs no stimulus ; if he dislikes his studies no stimulus will avail ; but a student either likes his studies or he dislikes them ; therefore stimulus is either not necessary, or it is of no avail,” — we have forgotten a third attitude of the student, possible indifference, and our conclusion is false. Stimulus may be useful to indifferent students.<sup>2</sup>

Irony and ridicule may have the effect of indirect arguments. The arguer wears a mask, or conceals his purpose, apparently agreeing with his adversary till he is sure of his audience, the more effectively to demolish him. He argues with mock seriousness. The first part of *Mark Antony's*

**Incorrect  
Alter-  
natives.**

**Various  
Devices  
Combined.**

<sup>1</sup> *American Addresses*, 25.

<sup>2</sup> Jevons, *Lessons in Logic*, 165.



*Speech*, Burke's *Vindication of Natural Society*, Defoe's *Shortest Way with Dissenters*, Swift's *Modest Proposal* and Whately's *Historic Doubts*, are classic examples. Webster's illustration of supposed resistance to the Tariff Law, in his *Reply to Hayne*, combines irony, ridicule, *reductio ad absurdum*,<sup>1</sup> *argumentum ad hominem*<sup>2</sup> and dilemma:—

“And now, Mr. President, let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable *modus operandi*. If a thing can be done, an ingenious man can tell *how* it is to be done; and I wish to be informed *how* this State interference is to be put in practice, without violence, bloodshed and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it, (as we probably shall not,) she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her legislature, declaring the several Acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston is collecting the duties imposed by these tariff laws. He, therefore, must be stopped. The collector will seize the goods if the tariff duties are not paid. The State authorities will undertake their rescue; the marshal, with his posse, will come to the collector's aid; and here the contest begins. The militia of the State will be called out to sustain the nullifying act. They will march, Sir, under a very gallant leader; for I believe the honorable member himself commands the militia of that part of the State. He will raise the nullifying act on his standard, and spread it out as his banner! It will have a preamble, setting forth that the tariff laws are palpable, deliberate and dangerous violations of the Constitution! He will proceed, with this banner flying, to the custom-house in Charleston, ‘all the while, sonorous metal blowing martial sounds.’ Arrived

at the custom-house, he will tell the collector that he must collect no more duties under any of the tariff laws. This he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina herself had in that of 1816. But, Sir, the collector would probably not desist at his bidding. He would show him the law of Congress, the treasury instruction, and his own oath of office. He would say, he should perform his duty, come what come might.

“Here would ensue a pause ; for they say that a certain stillness precedes the tempest. The trumpeter would hold his breath awhile, and, before all this military array should fall on the custom-house, collector, clerks, and all, it is very probable some of those composing it would request of their gallant commander-in-chief to be informed a little upon the point of law ; for they have doubtless a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the Constitution, as well as Turenne and Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire whether it was not somewhat dangerous to resist a law of the United States.

“What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution in Carolina of a law of the United States, and it should turn out, after all, that the law *was constitutional* ? He would answer, of course, treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that, some years ago. How, then, they would ask, do you propose to defend us ? We are not afraid of bullets, but treason has a way of taking people off that we do not much relish. How do you propose to defend us. ‘Look at my floating banner,’ he would reply ; ‘see there the *nullifying law* !’ Is it your opinion, gallant commander, they would then say, that, if we should be indicted for treason, that same floating banner of yours would make a good plea in bar ? ‘South Carolina is a sovereign State,’ he would reply. That is true ; but would the judge admit our plea ? ‘These tariff laws,’ he would repeat, ‘are unconstitutional, — palpably, deliberately, dangerously.’ That all may be so ; but if the tribunal should not happen to be of

that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of hemp tax worse than any part of the tariff.

"Mr. President, the honorable gentleman would be in a dilemma, like that of another great general. He would have a knot before him which he could not untie. He must cut it with his sword. He must say to his followers, 'Defend yourselves with your bayonets'; and this is war,—civil war.

"Direct collision, therefore, between force and force is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied."<sup>1</sup>

### 3. BASIS OF LOGIC.

On the basis of direction, or logical process, arguments are Deductive or Inductive; deductive when they move from the general toward the specific, inductive when they move from the specific toward the general.

**Deductive Argument Defined.** Deductive arguments evolve from a general principle or truth, a principle less general or a specific fact. They apply a general rule to a particular case. They infer an effect from an adequate cause, a deed from a motive, a phenomenon from an antecedent general condition. The general cause, condition, rule, law or truth, is reached by induction,<sup>2</sup> a process proceeding from specific examples to a principle including all kindred cases. Long and continual practice in inferring principles from particular facts, develops an insight for general conclusions. Experience renders many general truths practically self-evident.

From the low temperature the deduction is made

<sup>1</sup> *Great Speeches*, 266.

<sup>2</sup> Page 108.

that standing water will be frozen; from the force and extent of a cyclone, that property and lives will be destroyed. From the general principle that unscrupulous men will murder for money, Webster made the deduction that the Knapps might have killed Captain White; from the condition of the Colonies, Burke deduced their love of liberty and spirit of disobedience: —

**Examples of  
Deduction.**

“Then, Sir, from these six capital sources — of descent, of form of government, of religion in the Northern Provinces, of manners in the Southern, of education, of the remoteness of situation from the first mover of government — from all these causes a fierce spirit of liberty has grown up. It has grown with the growth of the people in your Colonies, and increased with the increase of their wealth; a spirit that unhappily meeting with an exercise of power in England which, however lawful, is not reconcilable to any ideas of liberty, much less with theirs, has kindled this flame that is ready to consume us.”<sup>1</sup>

Deductive argumentation is demonstrative in form; it is demonstrative in fact except when its premises are based on imperfect induction. It meets the conditions of a complete syllogism, which is its formal instrument. The rhetorical syllogism consists of three essential parts: (1) a general rule which may be a universal truth, or a generalization from experience; (2) an intermediate statement bringing the particular case within the rule; and (3) the application of the rule to the particular case. Or, the three essential statements may be described as (1) an assertion concerning a class; (2) a statement bringing a particular within that class; and (3) the same assertion concerning that particular.

**Rhetorical  
Syllogism.**

<sup>1</sup> *Select Works*, I. 184.



Logically the syllogism is defined as "the act of thought by which from two given propositions we proceed to a third proposition, the truth of which necessarily follows from the truth of these given propositions."<sup>1</sup> The special rules of the syllogism are founded upon the laws of thought. They serve to inform exactly in what circumstances one proposition can be inferred from two others.

**Logical  
Syllogism.**

"1. *Every syllogism has three and only three terms.*

These terms are called the major term, the minor term, and the middle term.

2. *Every syllogism contains three and only three propositions.*

These propositions are called the major premise, the universal truth or general rule or law; the minor premise, the statement bringing the particular case within this law, or principle; and the conclusion, the application of the principle, or the truth deduced from what precedes.

**Terms and  
Rules.**

3. *The middle term must be distributed once at least, and must not be ambiguous.*

4. *No term must be distributed in the conclusion which was not distributed in one of the premises.*

5. *From negative premises nothing can be inferred.*

6. *If one premise be negative, the conclusion must be negative; and vice versa, to prove a negative conclusion one of the premises must be negative.*

From the above rules may be deduced two subordinate rules, which it will be convenient to state at once:—

7. *From two particular premises no conclusion can be drawn.*

8. *If one premise be particular, the conclusion must be particular."*<sup>2</sup>

The middle term occurs in both premises but not in the conclusion. The major term is predicate of the conclusion. The minor term is subject of the conclusion. These terms are thus named because in the universal affirmative proposition, the predicate is necessarily a wider and more inclusive term than the subject. In the statement, "All men are mortal" the pred-

<sup>1</sup> Jevons, *Lessons in Logic*, 127.

<sup>2</sup> *Ibid.*

icate includes all other animals as well as men. The middle term is that by means of which the other two are compared.

In the complete concrete syllogism,

All Indians are dark-skinned (major premise),

Red Jacket is an Indian (minor premise),

Red Jacket is dark-skinned (conclusion),

it is asserted, first, that every member of the class, Indian, is dark-skinned ; second, that Red Jacket is included in the class, Indian ; and third, that what is asserted of the class, Indian, is true of a member of that class, Red Jacket. Nothing is affirmed in the conclusion beyond what is affirmed in the premises.

**Syllogism  
Illustrated.**

If the premises are true and the reasoning is valid, the conclusion must follow. Whether the premises can be proved true or not, depends upon the character and use of evidence ; whether the reasoning is valid or not, can be shown by applying the rules of the syllogism,—which is the province of Logic.

Very rarely in literary argument do reasoners make use of the complete syllogism, except to render perfectly apparent the premises from which the conclusion is deduced, or to show some fault in reasoning.

Deductive arguments take various forms.

**Kinds of  
Syllogism.**

One premise, or even the conclusion, may not be expressed if obvious enough to be taken for granted ; in this case the syllogism is called an *enthymeme*. One of the premises may be conditional, which gives the hypothetical syllogism. A syllogistic argument may be involved in a statement with its reasons, or with its inferences, or may be diffused throughout an extended discussion. To argue effectively, with clearness and cogency, the reasoner must have his deductive frame-

work clearly in mind at every point of his discussion, and keep it before the reader or hearer.

In the following paragraph from Burke,<sup>1</sup> from (1) and (2), the conclusion may be drawn, "I mean to offer reconciliation." Combining (1) with the second clause of (2) gives, "I mean to make concession." From the second clause of (2), with the supplied premise, (3) may be deduced. (2) combined with (5) also gives (3). Expansion of (5) would give, "We are the superior power; we may offer peace with honor and with safety." Expansion of (7) gives, "The colonies are the weaker; the concession of the colonies would be the concession of fear." Still other syllogisms are obviously suggested:—

"(1) I mean to give peace. (2) Peace implies reconciliation; and where there has been a material dispute, reconciliation does in a manner always imply concession on the one part or on the other. (3) In this state of things I make no difficulty in affirming that the proposal ought to originate from us. (4) Great and acknowledged force is not impaired, either in effect or in opinion, by an unwillingness to exert itself. (5) The superior power may offer peace with honor and with safety. (6) Such an offer from such a power will be attributed to magnanimity. (7) But the concessions of the weak are the concessions of fear. (8) When such a one is disarmed, he is wholly at the mercy of his superior; and he loses forever that time and those chances, which, as they happen to all men, are the strength and resources of all inferior power."

The same argument may be presented in many forms.

**Various Forms.** (1) A well-policed city will be free from crime; Berlin is a well-policed city; Berlin will be free from crime.

(2) If a well-policed city will be free from crime, Berlin will be free from crime, for it is well policed.

(3) If Berlin is well policed, it will be free from crime, for a well-policed city will be free from crime.

<sup>1</sup> *Select Works*, I. 167.

(4) Berlin ought to be free from crime ; for it is a well-policed city.

(5) Any well-policed city is likely to be free from crime ; Berlin ought, therefore, to be free from crime.

(6) Any well-policed city will be free from crime, and Berlin is well policed.

Those following the first form differ from it in either having a conditional premise, or in being abbreviated forms, that is, enthymemes. Clauses introduced by "because," "since," "for," are usually premises of enthymemes ; and those introduced by "hence," "therefore," "consequently," are frequently conclusions in that form of argument. There are two obvious advantages of the enthymeme, — conciseness, and the avoidance of what might seem a mere truism if expressed. In literature and in actual life, this abridged form of argument is by far the most common ; for example : —

"Blessed are the merciful ; for they shall obtain mercy."

"Man, being rational, is accountable for his actions."

"Classical learning, since it tends to withdraw the mind from low pursuits by creating a taste for intellectual enjoyments, deserves to be promoted."

"Every man should be moderate, for excess causes disease."

"If he has never been on a quest for buried treasure, it can be demonstrated that he has never been a child."

"If Pitt had carried out Adam Smith's doctrines of Free Trade, he would have been a great and useful minister ; but he did not."

"The several species of brutes being created to prey upon each other, proves that man was intended to prey upon them."

"The use of intoxicants should not be prohibited by law ; for this would be to restrict individual liberty, and such restriction by law is impolitic."

"It is the fashion just now, as you very well know, to erect so-called Universities, without making any provision in them at



all for Theological chairs. Institutions of this kind exist both here (Ireland) and in England. Such a procedure, though defended by writers of the generation just passed with much plausible argument and not a little wit, seems to me an intellectual absurdity ; and my reason for saying so runs, with whatever abruptness, into the form of a syllogism : — A University, I should lay down, by its very name professes to teach universal knowledge ; Theology is surely a branch of knowledge ; how then is it possible for it to profess all branches of knowledge, and yet to exclude from the subjects of its teaching one which, to say the least, is as important and as large as any of them ? I do not see that either premise of this argument is open to exception.”<sup>1</sup>

“ It has often been asked, what was the cause of the instantaneous and wide-spread popularity of *Childe Harold*, which Byron himself so well expressed in the saying, ‘ I awoke one morning and found myself famous.’ Chief among the secondary causes was the warm sympathy between the poet and his readers, the direct interest of his theme for the time. In the spring of 1812 England was in the very crisis of a struggle for existence. It was just before Napoleon set out for Moscow. An English army was standing on the defensive in Portugal, with difficulty holding its own ; the nation was trembling for its safety. The dreaded Bonaparte’s next movement was uncertain ; it was feared that it might be against our own shores. Rumor was busy with alarms. All through the country men were arming and drilling for self-defense. The heart of England was beating high with patriotic resolution.

“ What were our poets doing in the midst of all this ? Scott, then at the head of the tuneful brotherhood in popular favor, was celebrating the exploits of William of Deloraine and Marmion. . . . Southey was floundering in the dim sea of Hindu mythology. Rogers was content with his *Pleasures of Memory*. . . . Moore confined himself to political squibs and wanton little lays for the boudoir. It was no wonder that, when at last a poet did appear whose impulses were not merely literary, who felt in what century he was living, whose artistic creations were

<sup>1</sup> Cardinal Newman, *The Idea of a University*, 19.

throbbing with the life of his own age, a crowd at once gathered to hear the new singer. There was not a parish in Great Britain in which there was not some household that had a direct personal interest in the scene of the pilgrim's travels — 'some friend, some brother there.' The effect was not confined to England; Byron at once had all Europe as his audience, because he spoke to them on a theme in which they were all deeply concerned. He spoke to them, too, in language which was not merely a naked expression of their most intense feelings; the spell by which he held them was all the stronger that he lifted them with the irresistible power of his song above the passing anxieties of the moment. Loose and rambling as *Childe Harold* is, it yet had for the time an unconscious art; it entered the absorbing tumult of a hot and feverish struggle, and opened a way in the dark clouds gathering over the combatants through which they could see the blue vault and the shining stars. . . . In that terrible time of change, when every state in Europe was shaken to its foundation, there was a profound meaning in placing before men's eyes the departed greatness of Greece; it rounded off the troubled scene with dramatic propriety. Even the mournful scepticism of *Childe Harold* was not resented at a time when it lay at the root of every heart to ask, 'Is there a God in heaven to see such desolation, and withhold His hand?' " <sup>1</sup>

These examples serve to show some of the ways in which stiff and tedious syllogistic forms of argument may be modified. There is variation in the form of propositions, changed order of premises, transposition of terms, abridgment, amplification. In the last two, reasons are given for the truth of the premises; but the premises appear as such. No explanation or illustration will be mistaken for premises, nor do subordinate propositions and irrelevant matter conceal premises. The connection

What these  
Examples  
Show.

<sup>1</sup> William Minto on Byron, in *Encyclopædia Britannica*.

between arguments and conclusion is apparent. Neither metaphors nor equivocal terms confuse the reasoning.

Chains of argument consist either of full syllogisms or, more often, of enthymemes, where the conclusion of one argument is taken for a premise in the next, the conclusion of this for a premise in a third, and so on to a final conclusion. If every step is guarded, every proposition fully confirmed, the final conclusion may be made peculiarly convincing. Paul uses this form of argument in his letters:—

“Now if Christ be preached that he rose from the dead, how say some among you that there is no resurrection of the dead? But if there be no resurrection of the dead, then is Christ not risen; and if Christ be not risen, then is our preaching vain, and your faith is also vain. Yea, and we are found false witnesses of God, because we have testified of God that he raised up Christ.”<sup>1</sup>

“And we know that all things work together for good to them that love God, to them that are called according to his purpose. For, whom he did foreknow, he also did predestinate; . . . Whom he did predestinate, them he also called; whom he called, them he also justified; and whom he justified, them he also glorified.”<sup>2</sup>

“It is true, of course, that the immediate reason for accepting the beliefs of revealed religion is that the religion is revealed. But it is thought to be revealed because it was promulgated by teachers who were inspired; the teachers are thought to be inspired because they worked miracles; and they are thought to have worked miracles because there is historical evidence of the fact, which it is supposed would be more than sufficient to produce conviction in any unbiased mind.”<sup>3</sup>

The honest arguer as well as the reasoner must be

<sup>1</sup> I. Corinthians, xv. 12-15.

<sup>2</sup> *Ibid*, viii. 29-30. See also page 93.

<sup>3</sup> Balfour, *Foundations of Belief*, 184.

continually on his guard against fallacies, "those unsound modes of arguing which seem to demand conviction, to decide the question in hand, when in reality they do not." Deductive argument is very liable to fallacy; for in extended discussions its propositions are easily covered up and disguised with the facts, principles and illustrations put forward to sustain them. They are perverted by using terms in one place with one meaning, in another place with another meaning; by misinterpreting the grammatical construction; by asserting of things singly in one place what is shown to be true of them only collectively in another; or by asserting as true under a condition what would be true only without the condition, and *vice versa*. Most of these are logical fallacies, and are detected by applying the rules for the syllogism. Deductive reasoning is formally correct, if the conclusion follows from the premises, but it may be materially wrong. It is materially correct only when the premises are true, and the conclusion necessarily follows. In this case its conclusions are irrefutable. In other cases they may be refuted by proving a premise false, or by showing that the conclusion does not necessarily follow, or by proving the conclusion false directly, with stronger evidence than has been used to support the premises.

Fallacies in  
Deduction.

A common fallacy in deductive reasoning is begging the question, or *petitio principii*. Of this Jevons says:

"Another apt name for the fallacy is *circulus in probando*, or 'a circle in the proof.' It consists in taking the conclusion itself as one of the premises of an argument. Of course the conclusion of a syllogism must always

*Petitio  
Principil.*



be contained or implied in the premises, but only when those premises are combined, and are distinctly different assertions from the conclusion. Thus in the syllogism,

*B* is *C*,  
*A* is *B*,  
therefore *A* is *C*,

the conclusion is proved by being deduced from two propositions, neither of which is identical with it; but if the truth of one of these premises itself depends upon the following syllogism,

*C* is *B*,  
*A* is *C*,  
therefore *A* is *B*,

it is plain we attempt to prove a proposition by itself, which is as reasonable as trying to support a body upon itself.”<sup>1</sup>

Professor Hill illustrates this fallacy by an anecdote:

“A woman, on seeing a very small porringer, said to a child, ‘That must have been a little wee bear’s porringer, it is so small,’ and then added, ‘He must have been smaller than we thought, mustn’t he?’ To assume that the bear was very small in order to prove that the porringer was his, and then from the fact that the porringer is small to infer that the bear must have been very small, is manifestly to beg the question.”<sup>2</sup>

“Circumstances must not be viewed as suspicious which would not be considered suspicious if not viewed with a crime in the background.”<sup>3</sup> To assume the

crime in order to make the circumstances suspicious, and then to use the circumstances as evidence of the crime, is begging the question. To say that Vanderpool killed Field,<sup>4</sup> in order to account for the bloody spots on the sidewalk by the bank, and then to offer these spots as proof of the killing, is manifestly *a circulus in probando*. The blood was

**Further  
Examples.**

<sup>1</sup> *Lessons in Logic*, 180.

<sup>2</sup> *Principles of Rhetoric*, 344.

<sup>3</sup> H. B. Cheever in *Modern Jury Trials*, 304. <sup>4</sup> Page 56.

later shown to have dripped from fishermen's baskets. Certain circumstances attending the burning of a man's house would have been very suspicious if the house had been burned by design. He had just increased his insurance. He had just moved to a smaller house. He had put his plate in a bank and stored his surplus furniture. It would be manifestly illogical to assume that the man burned his house, in order to make these antecedent circumstances seem a preparation for it, and then to use these circumstances to prove the arson. The burning was accidental. An opportunity to rent to good advantage, and the necessity for an insurance policy of a given amount as security for a loan, account for all the circumstances rendered suspicious by assuming the man's guilt.

Of the same general nature is the assumption of the truth of a premise which is the essential thing to be proved; for example, "Every state should enact and enforce prohibitory liquor laws; *for this is the best way to control the liquor traffic.*"

**Assuming  
the Truth of  
a Premise.**

One may beg the question by defining a term to suit his present purpose, ignoring both its connection and its accepted meaning. A preacher, arguing against immersion as a mode of baptism, thus explained the passage: "And he received his sight forthwith, and arose, and was baptized," — "Arose means stood up; how could a man be immersed standing up?" It is begging the question to conclude that a witness is telling the truth because he says he is; or that a book is the genuine work of a certain writer, because it contains statements or intimations that it is his work, — for example, the Pentateuch or John's Gospel.

A fallacy of this kind may lurk in a single word or expression. Bentham calls these "question-begging epithets," and instances the words *heresy* and *constitution*. A religious assembly condemning a belief because it is "heresy," begs the question; for "heresy" is a belief that ought to be condemned. So a legislative body rejecting a measure as "unconstitutional" frequently begs the question, the unconstitutionality not having been shown. It is a *petitio principii* to say, the cause is relevant because it is a cause, when it has not been shown to be the real or only cause. To say that insanity is likely to continue because it is chronic, is equivalent to saying chronic insanity is chronic. There is a begging of the question in the phrase which speaks of "the taste of the public"; it assumes that there is one public having a taste in common with all its members, when in fact, there is an infinite number of publics having widely divergent likes and dislikes.

In his *Book of Fallacies*,<sup>1</sup> Bentham gives this illustration of begging the question:—

"Take, for example, *improvement* and *innovation*: under its own name, to pass censure on any improvement might be too bold: applied to such an object, any expressions of censure you could employ might lose their force; employing them, you would seem to be running on in the track of self-contradiction and nonsense.

"But improvement means something new, and so does *innovation*. Happily for your purpose, *innovation* has contracted a bad sense; it means something which is new and bad at the same time. Improvement, it is true, in indicating something new, indicates something good at the same time; and therefore, if the thing in question be good as well as new.

<sup>1</sup> Part IV., Chap. I.

innovation is not a proper term for it. However, as the idea of *novelty* was the only idea originally attached to the term innovation, and the only one which is directly expressed in the etymology of it, you may still venture to employ the word innovation, since no man can readily and immediately convict your appellation of being an improper one upon the face of it.

“With the appellation thus chosen for the purpose of passing condemnation on the measure, he by whom it has been brought to view in the character of an improvement, is not (it is true) very likely to be well satisfied ; but of this you could not have had any expectation. What you want is a pretence which your own partisans can lay hold of, for the purpose of deducing from it a colorable warrant for passing upon the improvement that censure which you are determined, and they, if not determined, are disposed and intend to pass on it.

“Of this instrument of deception, the potency is most deplorable.”<sup>1</sup>

The reasoner must be constantly on his guard against begging the question. The arguer must avoid the fallacy in his own work, and expose it in his opponents. He must test his own arguments, his definitions, his epithets, as well as those of his adversary. Where he suspects mere assumption in one of his propositions, the throwing of his argument into the syllogistic form will put him in a way to correct it ; and the calling for proof of an opponent's premises will be pretty sure to expose his assumptions ; and this is all that is necessary for refutation.<sup>2</sup>

Care  
Necessary.

Another common fallacy, especially among those who deliver long harangues, is that of the Irrelevant Conclusion. The technical name is *ignoratio elenchi* or ignoring the proof or refutation. The fallacy consists in arguing beside the

Irrelevant  
Conclusion.

<sup>1</sup> Part IV., Chap. I.

<sup>2</sup> Page 206.



point or to the wrong point. It proves some thing else in such a way as to seem to prove what it set out to prove, or to make listeners forget what it set out to prove. The disputant ignorantly or purposely substitutes a new conclusion for the proposition in dispute. The fallacy is most successful in long speeches where "the multitude of words and figures leaves room for confusion of thought and for forgetfulness." It is the favorite resource of those defending a weak case. "Though the gentleman is erratic in politics, he is orthodox in religion," is a bald example. To prove a man's honesty, when his ability is in question; to prove a congressman's popularity, when his statesmanship is under dispute; to show that a scheme will be pecuniarily remunerative, when the issue is as to its moral rightness, — is to argue beside the point.

One form of this fallacy consists in proving something which apparently includes the point at issue but really does not include it. If the proposition is, "The soul is immortal," and the argument is:—

**Confusion  
of Terms.**

"Whatever is eternal has neither beginning nor end;  
The human soul has a beginning;  
Therefore the human soul is not eternal;"

the argument ignores the real question, which is as to the *immortality* of the soul, not as to its eternity. Having a beginning is not incompatible with immortality.

The *argumentum ad hominem* is directed, not to the merits of the point at issue, but to the character, condition or circumstances of the person engaged in the discussion. Whately defines it as an argument "ad-

dressed to the peculiar circumstances, character, avowed opinions or past conduct of the individual, and therefore having reference to him only, *Argumentum ad Hominem*. and not bearing directly or absolutely on the real question." The argument is not that a principle is either good or bad, but that a certain man cannot consistently advocate it or deny it. The force of the argument, if it has any, lies in exposing an opponent's insincerity or inconsistency. Silencing an opponent, however, is not equivalent to disproving his proposition. Temperance is a worthy principle, though advocated by a drunkard. The duty of economy is no less a duty because urged by a spendthrift. If a new law is proposed, to argue that the law is not brought forward by the right person is irrelevant. To "abuse the plaintiff's attorney" for prosecuting a case, is to confess the weakness of the defence. Burke does not condemn the freeing of slaves, he only shows England's inconsistency in doing so:—

"Slaves as these unfortunate people are, and dull as all men are from slavery, must they not a little suspect the offer of freedom from that very nation which has sold them to their present masters?—from that nation, one of whose causes of quarrel with those masters is their refusal to deal any more in that inhuman traffic? An offer of freedom from England would come rather oddly, shipped to them in an African vessel which is refused an entry into the ports of Virginia or Carolina with a cargo of three hundred Angola negroes. It would be curious to see the Guinea captain attempting at the same instant to publish his proclamation of liberty, and to advertise his sale of slaves."<sup>1</sup>

Still another form of irrelevant conclusion is the *argu-*

<sup>1</sup> *Select Works*, I. 191.

*mentum ad populum.* This consists in addressing to a jury or a crowd arguments "calculated to excite their feelings and prevent them from forming a dispassionate judgment upon the matter in hand." It is a favorite device of criminal lawyers, agitators and demagogues. *Mark Antony's Speech* is a capital example. A good deal of the political oratory of the times has a strong flavor of the *Argumentum ad populum* :—

"We are not surprised to find arrayed against us those who are the beneficiaries of government favoritism ; they have read our platform. Nor are we surprised to learn that we must in this campaign face the hostility of those who find a pecuniary advantage in advocating the doctrine of non-interference with great aggregations of wealth as trespassing upon the rights of individuals.

"We do not defend the occupation of a highwayman who robs the unsuspecting traveller, but include among the transgressors those, who, through the more polite and less hazardous means of legislation, appropriate to their own use the proceeds of the toil of others.

"Now let me consider the paramount question of this campaign—money. The gold standard has been weighed in the balance and found wanting. Take from it the powerful support of the money-owning and the money-changing classes and it cannot stand for one day in any nation in the world. It was fastened upon the United States without discussion before the people, and its friends have never yet been willing to risk a verdict before the voters upon that issue.

"The farmers are opposed to the gold standard because they have felt its effects. Since they sell at wholesale and buy at retail they have lost more than they have gained by falling prices, and besides this, they have found that certain fixed charges have not fallen at all. Taxes have not been perceptibly decreased, although it requires more farm products now than formerly to secure the money with which to pay taxes.

Debts have not fallen. The farmer who owed \$1,000 is still compelled to pay \$1,000, although it may be twice as difficult as formerly to obtain the dollar with which to pay the debt.

“Wage-earners know that while the gold standard increases the purchasing power of the dollar, it also makes it more difficult to obtain possession of the dollar. They know that employment is less permanent and loss of work more probable. The gold standard encourages hoarding of money because money is rising ; its also discourages enterprise and paralyzes industry.

“The farmers and wage-earners together constitute a considerable majority of the country. Why should their entreaties be ignored in considering financial legislation ?

“Savings bank depositors know that under a gold standard there is an increasing danger that they may lose their deposits because of inability of the banks to collect their assets, and they still further know that if the gold standard is to continue indefinitely they may be compelled to withdraw in order to pay living expenses.

“It is only necessary to note the increasing number of failures in order to know that the gold standard is ruinous to the merchants and manufacturers.

“Salaries in business occupations depend upon the business conditions, and a gold standard both lessens the amount and the permanency of such salaries.”<sup>1</sup>

Another fallacy, called by different writers, “Ambiguity,” “Equivocation,” “Confusion of Terms,” may be discussed under irrelevant conclusion. Its source is the ambiguity or indefiniteness of terms.

What is true of a word used in a particular **Ambiguity.** sense, is treated as if true when the word is used in another sense ; or words from the same radical, or of the same etymology, or the same form, are used as of identical or cognate meaning. When an attempt is made to reduce the argument containing them to the

<sup>1</sup> Campaign Speech, New York, 1896.



sylogistic form, the syllogism is usually found to contain either four terms or an ambiguous middle term. Many examples of this fallacy, given in the books, show only a sort of verbal jugglery; but in discussions of considerable length the variation in the meaning of the word may be unnoticed, and the fallacy, because subtle and insidious, may easily remain concealed. To say that every believer in popular government should be broadminded, liberal, and ready to do his part in the public service, in short, democratic, and should therefore vote the democratic ticket, is to slip into this fallacy. The popular meaning of "democratic" is used in the first instance; the technical or political, in the second.

"Often the ambiguity is of a subtle and difficult character, so that different opinions may be held concerning it. Thus we might argue:—

"He who harms another should be punished. He who communicates an infectious disease to another person harms him. Therefore he who communicates an infectious disease to another person should be punished.

"This may or may not be held to be a correct argument, according to the kinds of actions we should consider to come under the term *harm*, according as we regard negligence or malice requisite to constitute harm. Many difficult legal questions are of this nature, as for instance:—

Nuisances are punishable by law;

To keep a noisy dog is a nuisance;

To keep a noisy dog is punishable by law.

"The question here would turn upon the degree of nuisance which the law would interfere to prevent. Or again:—

Interference with another man's business is illegal;

Underselling interferes with another man's business;

Therefore underselling is illegal.

"Here the question turns upon the *kind of interference*, and

it is obvious that underselling is not the kind of interference referred to in the major premise.”<sup>1</sup>

Among instances in which correct reasoning is of great practical importance, but in which arguments are habitually founded on a verbal ambiguity, Mill gives this:

“The mercantile public are frequently led into this fallacy by the phrase ‘scarcity of money.’ In the language of commerce, ‘money’ has two meanings: **Money.** *currency*, or the circulating medium; and *capital seeking investment*, especially investment on loan. In this last sense, the word is used when the ‘money market’ is spoken of, and when the ‘value of money’ is said to be high or low, the rate of interest being meant. The consequence of this ambiguity is, that as soon as scarcity of money in the latter of these senses begins to be felt,—as soon as there is difficulty of obtaining loans, and the rate of interest is high,—it is concluded that this must arise from causes acting upon the quantity of money in the other and more popular sense; that the circulating medium must have diminished in quantity, or ought to be increased. I am aware that, independently of the double meaning of the term, there are in the facts themselves some peculiarities, giving an apparent support to this error; but the ambiguity of the language stands on the very threshold of the subject, and intercepts all attempts to throw light upon it.”<sup>2</sup>

Fallacies of this sort may be avoided in one’s own arguments, and exposed in the work of one’s opponent, by carefully defining terms, and insisting on a rigid adherence to the one meaning wherever the term is used.

Some processes are devices too transparent to be called fallacies. Among these are,—shifting ground, that is, abandoning the original proposition for something allied or suggested, when the debater finds himself cornered; objecting to

**Tricks of  
Sophists.**

<sup>1</sup> Jevons, *Lessons in Logic*, 171.

<sup>2</sup> *Logic*, 564.

some part of a proposition and claiming to have overthrown it entirely; proving but part and claiming the whole; asking questions in such a form that a categorical answer traps the respondent; perverting the meaning of a proposition by emphasis. These are rather tricks of the sophist or demagogue than fallacies of the reasoner.

Inductive argument goes from particulars to generals, from special instances or single facts to a general truth, law or principle. Facts are learned from experience, by observation, or through inference from other facts. However learned, they are compared, and from them inferences are made of other facts not yet known, or of general truths to which the individual facts are related. Thus in the general statement of the deductive syllogism:—

**Inductive  
Argument  
Defined.**

“ All men are mortal ;  
Cæsar was a man ;  
Cæsar was mortal ; ”

the general assertion is based on known instances of mortality. The general statement includes more, however, than the sum of known facts. It assumes that what is true of instances in past generations will be true of those in present and future generations.

Oak wood exposed to fire, burns; so does pine, hemlock, birch, maple, ash, or hickory; it is to be inferred, therefore, that all wood is combustible. Lead, subjected to heat, melts; so does iron; so does silver; so does any one of a dozen other metals; it is therefore concluded that metals generally are fusible. This week a gentle southwest wind is followed by rain; last week there was the same occurrence; last month

**Illustrations.**

this happened several times ; it is inferred, then, that when the wind blows gently from the southwest, rain may be expected. In all these cases, what is known to be true of single things is inferred to be true of the class to which they belong ; what is learned of a single instance is inferred of like instances. This is the principle of Induction.

“ The process of inference, however, never takes place without some knowledge of the way things and qualities and events are connected in pairs or groups or chains, by natural law. . . . The special circumstances of every occurrence are so many marks or signs or indications, and get their significance from our knowledge of the laws of nature generally. Whether the given inference be right or wrong, whether it be express and deliberate, or rapid and free, whether it take the form of a cut-and-dried syllogism, or an argument from analogy<sup>1</sup> or from circumstantial evidence, in all cases equally, it is our beliefs about the way things hang together in Nature that provide alike the sole motive power of inference and the sole foundation on which we rest our proof.”<sup>2</sup>

**Basis of  
Induction.**

Perfect induction is inference based on all possible instances ; the general statement merely sums up all particulars. An inference based on an observation of less than all individual cases, is an imperfect induction. But whether perfect or imperfect, induction is a legitimate and valuable means of extending knowledge. Indeed it is claimed by some to be the only process of reasoning that furnishes knowledge at all, and to be the ultimate source of all knowledge.

**Perfect and  
Imperfect  
Induction.**

<sup>1</sup> Page 158.

<sup>2</sup> Sidgwick, *Process of Argument*, 44.



Much of the knowledge attained by induction must be more or less uncertain, for it is rarely possible to observe all instances. In common affairs where not much is at stake, men act on loose generalizations from few instances. The value of most scientific conclusions is due to the long, careful, patient investigation of facts from which they are inferred, — facts abundant, uniform, uncontradicted, and pointing in the same direction. The conclusions of Laws and Gilbert on soils and fertilizers are based on the carefully guarded experiments of more than fifty years. In his *Origin of Species*<sup>1</sup> Darwin hints at the number of instances taken into account for some of his inferences: —

“I am tempted to give one more instance showing how plants and animals, remote in the scale of nature, are bound together by a web of complex relations. I shall hereafter have occasion to show that the exotic *Lobelia fulgens* is never visited in my garden by insects, and consequently, from its peculiar structure, never sets a seed. Nearly all our orchidaceous plants absolutely require the visits of insects to remove their pollen-masses and thus to fertilize them. I find from experiment that humble-bees are almost indispensable to the fertilization of the heartsease (*Viola tricolor*), for other bees do not visit this flower. I have also found that the visits of bees are necessary for the fertilization of some kinds of clover: for instance, 20 heads of Dutch clover (*Trifolium repens*) yielded 2290 seeds, but 20 other heads protected from bees produced not one. Again, 100 heads of red clover (*T. pratense*) produced 2700 seeds, but the same number of protected heads produced not a single seed. Humble-bees alone visit red clover, as other bees cannot reach the nectar. It has been suggested that moths may fertilize the clovers; but I doubt whether they could do so in the case of the red clover, from their weight not being sufficient

<sup>1</sup> Chapter III.

to depress the wing-petals. Hence we may infer as highly probable that, if the whole genus of humble-bees became extinct or very rare in England, the heartsease and red clover would become very rare, or wholly disappear. The number of humble-bees in any district depends in a great measure on the number of field-mice, which destroy their combs and nests; and Colonel Newman, who has long attended to the habits of humble-bees, believes that 'more than two thirds of them are thus destroyed all over England.' Now the number of mice is largely dependent, as every one knows, on the number of cats; and Colonel Newman says, 'Near villages and small towns I have found the nests of humble-bees more numerous than elsewhere, which I attribute to the number of cats that destroy the mice.' Hence it is quite credible that the presence of a feline animal in large numbers in a district might determine, through the intervention first of mice and then of bees, the frequency of certain flowers in that district !”

The term, Scientific Induction, is applied only to inferences amounting to a general law, general cause or empiric fact.<sup>1</sup> Other inductions are called loose. The difference between loose and scientific induction lies in the greater care with which conclusions are reached. This care extends to the kind of instances selected or provided, their number, their scrutiny, and caution against error in every step of reasoning. The law of gravitation is an induction of the highest order. “Familiarity breeds contempt,” is a loose induction, but answers the purpose of a “rough and ready” rule for the conduct of prudent people. Huxley has in mind these two kinds of reasoning in the following paragraphs : —

Loose and  
Scientific  
Induction.

“So far as I can arrive at any clear apprehension of the matter, science is not, as many would seem to suppose, a modi-

fication of the black art, suited to the tastes of the nineteenth century, and flourishing mainly in consequence of the decay of the Inquisition. Science is, I believe, nothing but *trained and organized common sense*, differing from the latter only as a veteran may differ from a raw recruit; and its methods differ from those of common sense only so far as the guardsman's cut and thrust differ from the manner in which a savage wields his club. The primary power is the same in each case, and perhaps the untutored savage has the more brawny arm of the two. The *real* advantage lies in the point and polish of the swordsman's weapon; in the trained eye quick to spy out the weakness of the adversary; in the ready hand, prompt to follow it on the instant. But, after all, the sword exercise is only the hewing and poking of the club-man developed and perfected.

"The vast results obtained by science are won by no mystical faculties, by no mental processes other than those that are practiced by every one of us in the humblest and meanest affairs of life. A detective policeman discovers a burglar from the marks made by his shoe, by a mental process identical with that by which Cuvier restored the extinct animals of Montmartre from fragments of their bones. Nor does that process of induction and deduction by which a lady, finding a stain of a peculiar kind upon her dress, concludes that somebody has upset the inkstand thereon, differ in any way in kind from that by which Adams and Leverrier discovered a new planet.

"The man of science, in fact, simply uses with scrupulous exactness the methods which we all, habitually, and at every moment, use carelessly; and the man of business must as much avail himself of the scientific method, must as truly be a man of science, as the veriest book-worm of us all; though I have no doubt that the man of business will find himself out to be a philosopher, with as much surprise as M. Jourdain exhibited when he discovered that he had been all his life talking prose."<sup>1</sup>

"By Empiric Fact is meant that two phenomena are

<sup>1</sup> *Science and Education Essays*, 45.

always found associated, so that when we see one we expect to see the other, although no direct causal relation between the two has been established.

Thus in zoölogy the presence of occipital condyles is uniformly associated with the presence of mammæ and of warm, red blood; and this general fact is treated as a quasi induction.<sup>1</sup> Hence, when the remains of a new animal are discovered, exhibiting such condyles, the zoölogist infers, by deduction, that the animal belonged to the class Mammalia."<sup>2</sup>

Empiric  
Fact.

Next in force to the perfect induction, is the inference based on the relation of cause and effect. Where there is smoke there is fire; where there is ice forming, there is low temperature. The force of the argument lies in the relation of fire and smoke, low temperature and ice. The one is said to cause the other. When the effect is present the cause must be. There is perfect regularity of sequence. The ascertaining or testing of cause and effect, is a large part of inductive science, i. e., of investigation. What cause is in science, motive is in human action. A large part of forensic argumentation is occupied in showing that certain deeds are to be attributed to certain motives.

Cause and  
Effect.

The method in either of these cases is hypothesis<sup>3</sup> and verification. "When facts are in our possession, we frame an hypothesis, i. e., we assume provisionally

<sup>1</sup> See also Sidgwick, *Process of Argument*, 80, *et seq.* "There is one class of generalizations . . . which no one ever really doubts when once their meaning is seen . . . and of these, merely 'empirical' generalizations lie at one end of the scale, and 'scientific' generalizations, at the other."

<sup>2</sup> J. M. Hart, *Handbook of English Composition*, 110.

<sup>3</sup> Page 129.



a cause or motive to explain their relations; and the value of the hypothesis is to be judged by the success of this explanation. In the invention and treatment of such hypotheses, we must avail ourselves of the whole body of science already accumulated; and when we once have obtained a probable hypothesis, we must not rest till we have verified it by comparison with new facts. Sir Isaac Newton made frequent use of hypothesis in all of his investigations.”<sup>1</sup>

The complete method embraces induction, deduction and verification.

“The first process consists in such a rough and simple appeal to experience as may give us a glimpse of the laws which operate, without being sufficient to establish their truth. Assuming them as provisionally true, we then proceed to argue to their effects in other cases, and a further appeal to experience either verifies or negatives the truth of the laws assumed. There are, in short, two appeals to experience, connected by the intermediate use of reasoning. Newton, for instance, having passed a ray of sunlight through a glass prism found that it was spread out into a series of colors resembling those of the rainbow. He adopted the theory that white light was actually composed of a mixture of different colored lights, which became separated in passing through the prism. He saw that if this were true, and he were to pass an isolated ray of the spectrum, for instance, the yellow ray, through a second prism, it ought not to be again broken up into different colors, but should remain yellow whatever was afterwards done with it. On trial he found this to be the case, and afterwards devised a succession of similar confirmatory experiments, which verified his theory beyond all possible doubt.”<sup>2</sup>

“The successive steps in investigation are, first, observation

<sup>1</sup> *Education*, June, 1896, 599.

<sup>2</sup> *Jevons, Lessons in Logic*, 259.

and description, next classification and generalization, aided by invention, to account for puzzling facts, and ending in the formal statement of an hypothesis or theory. Then follows proof of the theory by deduction of consequences and by comparison of these with relevant facts. The simplest problems involve only the first steps in this train; the most complex require them all.”<sup>1</sup>

Mr. Mill has laid down in his *Logic*, certain canons to guide in the search for general truths or laws of nature, among the facts obtained by observation or experiment and involving the relation of cause and effect. These canons are slightly modified by Professor Jevons<sup>2</sup>:—

Mill's  
Canons.

“1. *Method of Agreement*. — If two or more instances of the phenomenon under investigation have only one circumstance in common, the circumstance in which alone all the instances agree, is the cause (or effect) of the given phenomenon; i.e., *the sole invariable antecedent of a phenomenon is probably its cause*.

“2. *Method of Difference*. — If an instance in which the phenomenon under investigation occurs, and an instance in which it does not occur, have every circumstance in common save one, that one occurring only in the former; the circumstance in which alone the two instances differ, is the effect, or the cause, or an indispensable part of the cause, of the phenomenon.

“3. *Joint Method*. — If two or more instances in which the phenomenon occurs have only one circumstance in common, while two or more instances in which it does not occur have nothing in common save the absence of that circumstance; the circumstance in which alone the two sets of instances (always or invariably) differ, is the effect, or the cause, or an indispensable part of the cause, of the phenomenon.

“4. *Method of Residues*. — Subduct from any phenomenon such part as is known by previous inductions to be the effect

<sup>1</sup> *Educational Review*, June, 1897.

<sup>2</sup> *Lessons in Logic*, 240.

of certain antecedents, and the residue of the phenomenon is the effect of the remaining antecedents.

“5. *Method of Concomitant Variations*.—Whatever phenomenon varies in any manner whenever another phenomenon varies in some particular manner, is either a cause or an effect of that phenomenon, or is connected with it through some fact of causation.”

In the White murder case, Webster, after reciting the essential facts, announced as his hypothesis, or theory, that “Captain White was murdered in pursu-  
Webster's  
Hypothesis.
ance of a conspiracy, and the defendant was connected with that conspiracy,” an hypothesis which accounts for all the facts brought out in the evidence, and harmonizes them.

If the details from which an induction is made are less than all possible cases, and if no causal relation appears between known facts and what is inferred, then  
Details Only  
Indications.
the particulars are not proofs but merely indications of a conclusion more or less probable. The probability will depend on the number of instances, and regularity of sequence. The more numerous the instances and the more invariable the sequence or accompaniment, the more nearly the indications approach to proof; but the conclusion can never be absolutely certain. “Thus, it has been asserted that animals which ruminate have cloven hoofs; but science has not discovered a connection between rumination and cloven hoofs. If a new ruminant should be found, one might infer that it would have cloven hoofs; but in the absence of knowledge of a causal connection, and in face of the fact that some animals with cloven hoofs (pigs and tapirs, for example), are not ruminants, such an inference would have little force.”<sup>1</sup>

<sup>1</sup> A. S. Hill, *Principles of Rhetoric*, 350. See also *Empiric Fact*, 113.

Fresh discoveries sometimes reveal exceptions to long accepted conclusions. The circulation of the blood was long supposed to be in one invariable direction. In 1824 "Von Hasselt happening to examine a transparent animal of the class of Ascidians, found to his infinite surprise that after the heart had beat a certain number of times, it stopped and then began beating the opposite way, so as to reverse the course of the current, which returned by and by to its original direction."<sup>1</sup> It was believed that no bird ever had teeth, till Professor Marsh in 1872 discovered in Kansas, fossil birds with teeth clearly defined.

Effects of  
New Dis-  
coveries.

"Some writers have asserted that there is a Principle called the Uniformity of Nature, which enables us to affirm that what has often been found to be true of anything will continue to be found true of the same sort of thing. It must be observed, however, that if there be such a principle it is liable to exceptions; for many facts which have held true up to a certain point have afterwards been found not to be always true. Thus there was a wide and unbroken induction tending to show that all the satellites in the planetary system went in one uniform direction round their planets. Nevertheless the satellites of Uranus when discovered were found to move in a retrograde direction, or in an opposite direction to all satellites previously known, and the same peculiarity attaches to the satellite of Neptune more lately discovered."<sup>2</sup>

Uniformity  
of Nature.

A common fallacy of inductive reasoning, is the inference of a general conclusion from too few instances.

<sup>1</sup> Huxley, *Science and Education Essays*, 55.

<sup>2</sup> Jevons, *Lessons in Logic*, 217.



A bank fails; some of its depositors conclude that all banks are untrustworthy, and all bankers are swindlers. The Americans who go abroad are usually well-to-do and spend money generously. Many Europeans, ignoring the few shabby or penurious travelers, infer that all Americans are wealthy. On the other hand, travelers are tempted to make broad generalizations as to the character and manners of the people in countries visited, from a hasty observation of a single class or a few classes, leaving out of account what has not been observed, and what is opposed to their conclusions. Partisans and sectarians under the influence of a dominant idea, are likely to see only those special cases which will allow an inference in favor of one view, and which might easily be met by as many instances supporting an opposite view. The New Testament records the baptism of several entire families. It is inferred that infants must have been baptized, because many families have infants, — the reasoner ignoring the fact that some families have none.

Practical men point to a few college-bred men who have failed in the active pursuits of life, and assert that college training unfits men for practical affairs.

Perhaps the most frequent fallacy of induction is the assumption of a causal relation where none exists. Beans are rubbed upon warts and then buried. The warts disappear and their disappearance is said to be caused by the beans. A person feeling ill takes a patent medicine and recovers. He believes the medicine effected the cure, when in reality it may have been neutral, or even have retarded recovery. A touch from a sovereign was once

**Fallacies.**  
**Too Few**  
**Instances.**

*Non Causa,*  
*Pro Causa.*

supposed to cure King's Evil. Eclipses and comets were long supposed to cause disasters. The changes of the moon are still supposed by many to cause variation in weather, in crops, in the fattening of animals, in the strength of timber, and in the success of different undertakings. In these cases the inference is from particulars to particulars, when there is no relation but the accidental one of sequence or simultaneity. Conclusions of this kind differ little from superstitions. In medicine and medical practice there are so many elements to be taken into account, that it is easy to fall into the fallacy of *non causa pro causa*. "Medicine is merely empirical as long as it rests upon such generalizations as that quinine cures ague without our knowing why." In political and sociological affairs reasoners are specially liable to give undue weight to an apparent cause, when in fact the effect to be explained is due to a combination of causes.

"We can mention but a few of the fallacies which have had much popularity with this generation, and which have now been punctured. It has been so vehemently asserted as to be commonly believed that the rise of wages during the last fifty years has been due to trades unions. Trades unions have insisted that wages should be raised, and wages have risen ; that has established the relation of cause and effect for many people in England, just as the tariff is held to be the efficient force in this country. These unions have not invented machines nor opened markets nor extended credit. They have probably, on the whole, diminished production and discouraged enterprise ; and if they follow the leaders that are now most prominent, they will seriously interfere with commercial prosperity. So of the 'living wage' theory. To suppose that any class of laborers can obtain higher wages by refusing to work for lower wages is a gross

Effect of  
Trades  
Unions.

and mischievous fallacy ; this assertion is supported by sufficient proofs. Combination is futile to effect it except when competition would effect it. And, after all the abuse that has been heaped upon competition, it is the great preserver of freedom and promoter of equality.”<sup>1</sup>

“After two hundred and fifty years, Massachusetts is now giving more education of all sorts, to all its people, than any other American State. As a result, the average production of each of her two million, five hundred thousand and people is seventy-three cents per day, while the average in the United States, as a whole, is but forty cents a day. And this in a State that, two hundred years ago, presented fewer attractions to the seeker after wealth than almost any section of America outside of New England. Without a navigable river, or a mineral plant of any considerable importance ; half her territory a hill-side which a western farmer ‘would not take as a gift’ ; two or three harbors on a stormy coast, and a climate so tremendous that, for generations, it almost decimated its people, this Commonwealth of eight thousand square miles is perhaps, relatively, the richest corner of the earth. To-day, the excess of the earnings of its population above the American average is \$250,000,000 a year ; just the sum laid up in its savings banks by its laboring population who invest in sums less than five hundred dollars. And to-day one third of this population is composed of immigrants, chiefly from the peasant class of countries where the condition of the peasantry has been the by-word of history. There is no other rational way of accounting for this marvelous industrial success than the persistence of the people in this State in supporting every agency of popular education for two hundred and fifty years. Here is no secret of ready money-making ; and the Bay State to-day stands on this eminence of success, saying to all commonwealths and all peoples : ‘Go and do likewise.’”<sup>2</sup>

What is attributed in the first example to combination as a cause, and in the second example, to superior facil-

<sup>1</sup> *The Nation*.

<sup>2</sup> *Education*, April, 1896.

ities for popular education, is by others attributed to quite different causes, — protection to home industry, improved machinery, division of labor, decrease of intemperance, New England thrift, and so on almost *ad infinitum*.

In the fallacy, *post hoc ergo propter hoc*, it is argued that one phenomenon following another is the effect of that other. This is a species of the fallacy, *non causa*, and is illustrated by some of the examples already given. Instances are numerous. *Post Hoc.*

“Thus it is a familiar fact in politics that hard times, whatever may have been their causes, discredit the party in power, the ‘outs’ arguing that since the present administration came into office money has been scarce, and wholly omitting to refer to speculation, drought, or any other cause of financial depression.”<sup>1</sup> It is argued that when there is a great amount of currency in a country — greenbacks or silver — there is a great amount of wealth, and that in some way the currency is the cause of the wealth; whereas it is nearer the truth to say, the currency does not make the wealth, but is demanded by the wealth as a convenient medium of exchange. On the confusion of cause and effect, or failure to note the mutuality of cause and effect, Professor Fowler<sup>2</sup> quotes the following from Sir George Cornwall Lewis: —

“An additional source of error in determining political causation is likewise to be found in the *mutuality of cause and effect*. It happens sometimes that when a relation of causation is established between two facts it is hard to decide which, in the given case, is the cause and which the effect, because they act

<sup>1</sup> Ballantine, *Inductive Logic*, 163.

<sup>2</sup> *Ibid*, 322.



and react upon each other, each phenomenon being in turn cause and effect. Thus, habits of industry may produce wealth ; while the acquisition of wealth may promote industry ; again, habits of study may sharpen the understanding, and the increased acuteness of the understanding may afterward increase the appetite for study.

**Mutuality  
of Cause and  
Effect.**

So the excess of population may, by impoverishing the laboring classes, be the cause of their living in bad dwellings ; and, again, bad dwellings, by deteriorating the moral habits of the poor, may stimulate population. The general intelligence and good sense of the people may promote its good government, and the goodness of the government may in its turn increase the intelligence of the people, and contribute to the formation of sound opinions among them. Drunkenness is in general the consequence of a low degree of intelligence, as may be observed both among savages and in civilized countries. But, in return, a habit of drunkenness prevents the cultivation of the intellect, and strengthens the cause out of which it grows. As Plato remarks, education improves nature, and nature facilitates education. National character, again, is both effect and cause ; it reacts on the circumstances from which it arises. The national peculiarities of a people, its race, physical structures, climate, territories, etc., form originally a certain character, which tends to create certain institutions, political and domestic, in harmony with that character. These institutions strengthen, perpetuate, and reproduce the character out of which they grew, and so on in succession, each new effect, becoming, in its turn, a new cause. Thus a brave, energetic, restless nation, exposed to attack from neighbors, organizes military institutions : these institutions promote and maintain a warlike spirit ; this warlike spirit, again, assists the development of the military organization, and it is further promoted by territorial conquests and success in war, which may be its result — each successive effect thus adding to the cause out of which it sprang.”

Fallacies of inductive argument may be avoided by careful analysis. Data from which inferences are made

must be proved facts. Instances enough should be used to raise a reasonable probability. The conclusion inferred should be amply verified by additional cases. If causal relation is claimed, it should be shown, and the cause should be shown to be adequate, and neither intercepted nor superseded. From empiric facts, empiric induction, and imperfect induction, no more than probability or practical certainty should be claimed. The careful reasoner will not assume causation, but look for numerous coincidences. One instance does not prove a law, nor do a dozen; but one discordant instance may disprove it.

**Cautions in  
Induction.**

Induction and deduction go hand in hand. Deduction tests the conclusions from premises arrived at by induction. In some branches of knowledge the one predominates, in some, the other. In the natural and physical sciences there is a more frequent use of inductive processes.

**Induction  
and Deduction  
Complementary.**

“Mathematical training is almost purely deductive. The mathematician starts with a few simple propositions, the proof of which is so obvious that they are called self-evident, and the rest of his work consists of subtle deductions from them. The teaching of languages is of the same general nature : authority and tradition furnish the data, and the mental operations of the scholar are deductive. If history be the subject of study, the facts are still taken upon the evidence of tradition and authority.”

“In every-day life most of the business which demands our attention is matter of fact, which needs, in the first place, to be accurately observed or apprehended ; in the second, to be interpreted by inductive and deductive reasonings which are altogether similar in their nature to those employed in science. Whatever is taken for granted, is so taken at one's peril ; fact

and reason are the ultimate arbiters, and patience and honesty are the great helpers out of difficulty.”<sup>1</sup>

“Every time a savage tracks his game, he employs a minuteness of observation and an accuracy of inductive and deductive reasoning, which, if applied to other matters would assure some reputation to a man of science. In complexity and difficulty the intellectual labor of a ‘good hunter and warrior’ considerably exceeds that of an ordinary Englishman.”<sup>2</sup>

#### 4. BASIS OF SOURCE.

On the basis of the source from which they are derived, arguments may be classed as Arguments from Antecedent Probability, Arguments from Example, and Arguments from Sign.<sup>3</sup> The first kind have their source in the relation which cause bears to effect or motive to deed. The second have their source in the resemblance which persons, things, events and circumstances, have to other persons, things, events and circumstances, in certain respects and under certain conditions. The third have their source in the association of ideas, — effects and causes, conditions, accompaniments. The first, also called arguments *a priori*, correspond in general to deductive argument; the second, which are for the most part arguments *a posteriori*, correspond in general to inductive. This classification is thought to afford greater convenience and facility in the discovery or invention of arguments, than the classifications previously discussed; while the classification into deductive and inductive arguments is better adapted to indicate how the reasoner may test the validity

<sup>1</sup> Huxley, *Science and Education Essays*, 126.

<sup>2</sup> Huxley, *Darwiniana*, 176. <sup>3</sup> See Direct Argument, 78.

of his own reasoning and argumentation, and recognize the force or detect the fallacy of the reasoning of an opponent.

“Antiphon’s strong point in argument was the topic of General (antecedent) Probability. ‘Is it likely that such and such a thing would have occurred?’ ‘Would this little man have been likely to attack this big one; or, if he did, would he not have known beforehand that the presumption would be against him?’ This topic of general probability was the favorite weapon of the Greek rhetoricians. Aristotle himself gave it an important place in his great treatise in which he formulated the principles that had prevailed in the usage of the early orators.”<sup>1</sup>

Great  
Orators.

In the courts, in deliberative bodies, in demonstrative reasoning, and in practical affairs, the argument from antecedent probability is very common. It attempts to give the cause of a fact, and the motive of a deed or course of action. Since cause precedes effect and motive precedes conduct, the argument from antecedent probability goes from a past to a less remote past or present, and from past or present to future. Assuming a fact, it explains it; assuming a deed, it accounts for it; assuming a truth, it shows why it might be true. Assuming the expediency of a measure, it attempts to show from antecedent circumstances why it would be expedient. It deals with causes, motives, forces, influences.

Antecedent  
Probability  
Defined.

There is an antecedent probability that the scholarship, judgment, knowledge of men, and administrative

<sup>1</sup> Sears, *History of Oratory*, 40.



ability, which have made a man successful at the head of one educational institution, will enable him to succeed as president of a similar institution. We argue

in the same way that the soil, tillage, climate, and seed, that have given an abundant

**Illustrations.**

crop of grain or fruit or vegetables, will continue to give it. It is known that to satisfy their own hunger or to save their starving families, men will steal; that to gratify a greed for gold, to satisfy a vaulting ambition, to seek revenge, to remove the cause of jealousy, — men will lie or forge or rob or kill. Jean Valjean's sister's children were starving. He passed by a baker's shop. Some loaves disappeared. It was argued from antecedent probability that he took the bread. The Knapp's wanted Captain White's fortune, which they understood was to go to others. He was found murdered. Webster argued from antecedent probability that the Knapps were the murderers. When Mrs. Craven presented deeds conveying to herself part of the Fair estate, and a will bequeathing to her large sums of money, she being a stranger to the family, there was an antecedent probability of forgery. The probability is called *antecedent*, since "the cause or motive was in operation before the occurrence of that which had to be accounted for." Temperance agitators argue that the drinking habit once formed will continue. It is argued that the pulpit, the press and the platform, strengthen the security of free institutions. From political and social influences sure to operate in certain circumstances, men of sagacity and foresight have predicted great political and social upheavals, — the French Revolution, the American Revo-

lution, the Civil War in America. From the forces at work in France, and the absence of those forces in England, Burke argued what *would* be the result of war between France and Great Britain:—

“When I look to the other side of the water, I cannot help recollecting what Pyrrhus said, on reconnoitring the Roman camp: ‘These barbarians have nothing barbarous in their discipline.’ When I look, as I have pretty carefully looked, into the proceedings of the French King, I am sorry to say it, I see nothing of the character and genius of arbitrary finance, none of the bold frauds of bankrupt power, none of the wild struggles and plunges of despotism in distress,—no lopping off from the capital of debt, no suspension of interest, no robbery under the name of loan, no raising the value, no debasing the substance, of the coin. I see neither Louis the Fourteenth nor Louis the Fifteenth. On the contrary, I behold, with astonishment, rising before me, by the very hands of arbitrary power, and in the very midst of war and confusion, a regular, methodical system of public credit; I behold a fabric laid on the natural and solid foundations of trust and confidence among men, and rising, by fair gradations, order over order, according to the just rules of symmetry and art. What a reverse of things! Principle, method, regularity, economy, frugality, justice to individuals, and care of the people, are the resources with which France makes war upon Great Britain. God avert the omen! But if we should see any genius in war and politics arise in France to second what is done in the bureau!—I turn my eyes from the consequences.”

The argument from antecedent probability predominates throughout Burke’s *Speech on Conciliation*. He aims continually to show why it *would be* to England’s interest to conciliate the Colonies.

Antecedent forces and influences may be brought forward to account for what has already happened. In an address before the National Democratic Con-

vention at Chicago in 1896, a delegate thus accounted for "hard times" under Democratic administration, and attributed to Democratic administration: —

"The people, applying the power of memory and analysis alike to discover the causes of their arrested prosperity, need not go far to find them. They do not forget that when the

**From Past to Present.** Democracy came into power in 1893 it inherited from its Republican predecessor a tax system and currency, a system of which the McKinley and Sherman laws were the culminating atrocities. It came into power amidst a panic which followed upon their enactment with strikes, lockouts, riots, civic commotions, while scenes of peaceful industry in Pennsylvania had become military camps. Besides its manifold features, the McKinley law had thrown away fifty millions of revenue derived from sugar under a special plea of a free breakfast table, and substituted bounties to sugar planters, thus decreasing the revenue and increasing expenditure, thus burning the candle at both ends and making the people pay at last for their alleged free breakfast.

"From the joint operation of the McKinley law and the Sherman law, an adverse balance of trade was forced against us in 1893, a surplus of \$100,000,000 in the treasury was converted into a deficit of \$70,000,000 in 1894; and engraved bonds prepared by a Republican secretary to borrow money to support the Government were ill omens of preorganized ruin that awaited the coming Democracy and depleted treasury.

"More significant still, the very authors of the ill-starred Sherman law makeshift were always at the confessional, upon the stool of penitence, and were begging the Democrats to help them put out the conflagration of disaster that they had themselves kindled."

In all valid arguments there is a basis in experience. A cause in one instance produces a certain effect. Men gradually learn by experience and observation to look for this effect when this cause is present. From what

has happened or is happening, men learn to conclude what will happen. We know one fact or set of facts; we infer another resulting fact or set of facts. The probability of his success in a new position exists before the college president is called to his new charge. There is a probability of a good crop, before the farmer sows his seed. The probability of resistance to tyranny existed before the English oppressed the Colonies; the probability was raised in that particular case as soon as oppression began. In each particular case, the argument rests in a general belief that uniform causes will produce uniform effects.

**Basis in  
Experience.**

Scientific investigators make use of the argument from antecedent probability. Unexplained phenomena are to be accounted for. Assuming these phenomena to be what they seem, workers in science frame hypotheses to account for them. These hypotheses are "theories, assumptions or suppositions, employed in scientific inquiry and falling short of ascertained truths." "Explanation, in the scientific sense, means the reduction of a series of facts which occur uniformly but are not connected by any known law of causation, into a series which is so connected, or the reduction of complex laws of causation, into simpler laws."<sup>1</sup> Professor Fowler<sup>2</sup> assigns to the legitimate hypothesis the following qualities: (1) It must not be known or suspected to be untrue, i. e., it must not be inconsistent with facts already ascertained or the inferences to which they lead;<sup>3</sup> (2) it must be capable of

**Used by  
Scientists.**

<sup>1</sup> Fowler, *Inductive Logic*, 97.

<sup>2</sup> *Ibid*, 99, *et seq.*

<sup>3</sup> That it do not conflict with any laws of nature, or of mind, which we hold true. — *Jevons*.



verification or of disproof, or at least of being rendered more or less probable by subsequent investigation ; (3) it must be applicable to the description or explanation of all the observed phenomena, and if it assigns a cause, must assign a cause fully adequate to have produced them ; (4) to be accepted as a complete induction or to be regarded as possessing a great amount of probability, it must be shown that nothing else but the assigned cause can account for the phenomena in question."

"It was by availing himself of the latter mode of proof, hypothesis and verification, that Newton demonstrated the existence in the sun, of a central force attracting the planets toward it. Assuming Kepler's hypothesis (then  
**Law of Gravitation.** sufficiently verified by observation to be universally accepted as a true statement of the facts), that equal areas are described by the radii vectores of planets in equal times, Newton showed that this fact could be due to only one cause, namely, the deflection of the planets from their rectilinear course by a force acting in the direction of the sun's center. The existence of the central force was, at first, started by him as an hypothesis. He then proved that, on the supposition of the existence of the central force, 'the planet will describe, as we know by Kepler's first law that it does describe, equal areas in equal times ; and lastly he proved that if the force acted in any other direction whatever, the planet would not describe equal areas in equal times. It being thus shown that no other hypothesis would accord with the facts, the assumption was proved ; the hypothesis became an inductive truth. Not only did Newton ascertain by this hypothetical process the direction of this deflecting force ; he proceeded in exactly the same manner to ascertain the law of variation of the quantity of that force. He assumed that the force varied inversely as the square of the distance ; showed that from this assumption the remaining two of Kepler's laws might be deduced ; and finally that any other law of variation would give results inconsistent with those laws, and inconsistent therefore

with the real motions of the planets, of which Kepler's laws were known to be a correct expression.<sup>1</sup>''

"It will be noticed that the course of demonstration pursued in this instance is the following: (1) We have certain observed facts; (2) these observed facts are generalized in what are called Kepler's laws; (3) we have the assumption of the central force; (4) it is shown Steps in this Process. that the central force will account for Kepler's laws, and therefore, of course, for the particular facts of observation on which they were founded; (5) it is shown that this assumption is the only one which will account for those laws, or the particular facts expressed by them; (6) it is inferred by the Method of Difference, that the assumption of the central force, as it will account for, and is the only supposition that will account for, the observed facts, must be accepted as true; (7) Kepler's laws are now proved deductively from what we have ascertained to be the valid induction of a central force."<sup>2</sup>

Priestly and Scheele argued from antecedent probability when they established the truth of the proposition that combustion is simply union with oxygen. Other chemists argued in the same way to support the generalization that "in all chemical Other Discoveries. changes there is no such thing as increase or diminution but only substitution," the fundamental truth of the indestructibility of matter, upon which all modern chemistry rests. The discovery of the planet Neptune in 1845, by purely *a priori* reasoning from the observed effects of its gravitation, furnished for the Newtonian theory, the grandest confirmation known in the history of science. Lyell argued in this way when he accounted for the vast changes in the relations of land and water upon the globe, in the relations of mountain and plain, of soils, climates, vegetable productions

<sup>1</sup> Mill, *Logic*, 351.

<sup>2</sup> Fowler, *Inductive Logic*, 112.

and animal populations. He assumed that the same physical forces which are in operation now, have been in operation during endless ages. Then the idea of evolution was irresistibly forced upon men's attention. Other changes besides geological could be most satisfactorily accounted for "by reference to the ceaseless, all pervading activity of gentle, unobtrusive causes, such as we know."<sup>1</sup>

Arguing from antecedent probability, Darwin accounted by the theory of evolution for many observed facts of nature. "It appeared to me," he says, "that by following the example of Lyell in geology, and by collecting all facts which bore in any way on the variation of animals and plants under domestication and nature, some light might perhaps be thrown on the whole subject (of the origin of species)." To account for these facts he formed the hypothesis: "Species have originated by means of natural selection, or through the preservation of the favored races in the struggle for life." What Darwin attempted to do, is in exact accordance with the rule laid down by Mill. He endeavored to determine certain facts inductively by observation and experiment. He then reasoned from the data thus furnished. At last he tested the validity of his ratiocination by comparing his deductions with observed facts of nature. Darwin endeavored to prove inductively that species arise in a given way. He desired to show deductively that if they rise in that way, the facts of distribution, development, classification, and so forth, may be accounted for, — that is, may be deduced from their mode of origin, combined with admitted changes in physical geography and climate, during an indefinite period. And this explanation, or coincidence of observed facts with deduced facts, is, so far as it extends, a verification of the Darwinian view.

The plot and the characters of a drama or a work of

<sup>1</sup> Huxley, *Darwiniana*, 73.

fiction, involve a proper regard for antecedent probability. The playwright or the story-teller may introduce any character, in any circumstances, and under any kind of influences; but subsequent utterances, behavior and development, must be such as might be expected from this character in the circumstances. Events and incidents of any kind may be invented, if they are in keeping with the forces and influences in operation; but they must accord with these forces and influences. Our notions of things and their relations "are confirmed by the whole of our own experience, which may be of enormous extent and variety, by the experience of our ancestors, and by all that we can ascertain of the past history of nature." Even in merely entertaining literature we do not tolerate flagrant violation of these notions. "The right kind of thing should fall out in the right kind of place; the right thing should follow; and not only must the characters talk aptly and think naturally, but all the circumstances in a tale must answer one another, like notes in music; the threads of a story must come from time to time together and make a picture in the web; the characters must fall from time to time into some attitude to each other or to nature, which stamps the story home like an illustration. Crusoe recoiling from the foot-print, Achilles shouting over against the Trojans, Ulysses bending the great bow, Christian running with his fingers in his ears, — . . . these are epoch-making scenes which put the mark of truth upon a story."<sup>1</sup>

"George Eliot's characters are substantial living people, filling us with an intense sense of reality. Looking

<sup>1</sup> Robert L. Stevenson, *A Gossip on Romance*, 255.



into our own lives, we know that their secret vicissitudes are true. In Tom and Maggie Tulliver, in Dorothea Brooke, in Tito Melema, in Gwendolen Harleth, we enter into and identify ourselves with the inner experience of a human soul. Like ourselves they are subject to change, acted upon by others, acting on others in their turn; moulded by the daily pressure of things within and without. We are made to understand the growth or the degeneration of their souls; to see how and why Tito slips half consciously down the easy slopes of self-indulgence, or Romola learns through the discipline of suffering to ascend the heights of self-renunciation and find peace. Weakness, prompting to thoughtless self-gratification, is wicked and brings inevitable retribution. The death of selfishness is our road and the world's road to progress and peace."<sup>1</sup>

"Preachers may learn a lesson from the best writers of fiction. They study the necessities of the narrative. They keep to the probabilities of history. Mr. Dickens tells us that while he was publishing *The Old Curiosity Shop* as a serial story, he received letters from friends and strangers on both sides of the Atlantic, begging him not to give a tragic ending to the story, by the death of "Little Nell." But those letters were to his mind evidence that the tragic end was the necessary one, because the only natural one. Else why did readers forbode it? That instructive foreboding was an instinctive decree of art. So Mr. Dickens reasoned; and he refused to obey the suggestions of his correspondents."<sup>2</sup>

<sup>1</sup> Pancoast, *English Literature*, 377. <sup>2</sup> Phelps, *Theory of Preaching*, 386.

It has been questioned whether *Uncle Tom's Cabin* was an entirely correct description of a slave-holding community; whether there were not hosts of considerate and merciful slaveholders. It was not the author's purpose to describe this class. She Mrs. Stowe. was engaged upon a "novel with a purpose," an anti-slavery tract, not an economic study. She was attempting to portray, and she succeeded in portraying, the probable conditions of life under a system of slavery, a system where the law gave the owner absolute power over his human chattels, a system responsible for the worst conditions arising under it. So far from denying the probability of the conditions portrayed, many Southerners of high standing admitted that every incident could be duplicated from their own observation. The success of this novel, like that of every "novel with a purpose," depended upon its squaring with actual facts. Its premises could not be arbitrarily chosen.

The writer of fiction, since he aims at general truth and not at particular truths, may prefer an impossibility which may be made to seem probable, to a probability which seems impossible. This is the case Impossible  
Made to Seem  
Probable. with most of the incidents in the career of Victor Hugo. Jean Valjean, in Hugo's *Les Misérables*, and with the character of the hero himself. His sudden conversion from hardened criminal to tender-hearted philanthropist, is an impossibility which by clever management is made to seem quite probable. So in *Notre Dame*: —

"Esmeralda is an improbable, almost impossible being. No one writing now, with evolution in the air, would venture to disregard the laws of inherited tendency so far as to evoke such

a character from the cloud-land of fancy. Mr. Francis Galton would laugh him to scorn. The girl's mother was, — far from being a model of her sex ; her father was, — anybody you like. Yet from such parentage of vice come exquisite beauty and superior virtue. Failing birth-gifts, no education accounts for so delicate a product. Dragged from infancy through the ditches that lie along the broad highway of life, she is now dwelling in one of the foulest dens in the foul old city. She is as impossible as Sue's *Fleur de Marie*. Yet she is made to seem so probable and so natural that one would as soon think of doubting that Portia did in fact visit Venice disguised as a learned Judge from Padua, and after escaping her husband's recognition, confound Shylock by her superior interpretation of the law.”<sup>1</sup>

But when Hugo wished to denounce “the external fatality that hangs over men in the form of foolish and inflexible superstition”; or “awaken us a little to the cost of the society which we enjoy, to the sweat and labor of those who support civilization”; or “to show man hand to hand with the elements, the last form of external force that is brought against him”; when he wishes in his novels to exhibit “the tyranny of religion, the tyranny of law, the tyranny of the elements,”<sup>2</sup>—he must make his causes and effects square with the facts of human experience.

“The intelligent theatre-goer takes with him to the play a certain knowledge of historical relations, definite ethical and moral demands upon human life, and either intimations or a knowledge of the course of events. He feels keen disappointment at any contradiction between what he expects in the circumstances, and what is presented. That ocean vessels should land on the coast of Bohemia, and that Charlemagne should use cannon, seem to him serious mistakes. That Shylock is promised mercy if he will

**Probabilities  
in Drama.**

<sup>1</sup> Marzials, *Victor Hugo*, 112.

<sup>2</sup> Introduction to *Toilers of the Sea*.

turn Christian, shocks the spectator's moral sense; and he thinks it not probable that a just judge has so decided. The dramatist must make the connection of events and the motives and characters of his heroes probable. The hearer keenly feels the speech of Antony to be a result of the wrong which the conspirators have done Cæsar; and through the relation of Antony to Cæsar, and his behavior in the previous dialogue scene with the conspirators, the speech is also conceived as the necessary consequence of sparing Antony, and the senseless and overhasty confidence which the murderers place in him. The character of the mob makes the effect of the speech probable. Thus internal consistency, which is the same thing as probability, is secured by representing an event which follows another as an effect of which that other is an evident cause. This is called assigning the motive."<sup>1</sup>

The argument from antecedent probability is used wherever men reason with their fellows. Those appealed to do not readily accept what cannot be naturally accounted for. The political orator must show why his party, his measures or his candidates, may be more serviceable to the voter than those of his opponent. The organizer seeking capital for investment, must show why the investment is likely to turn out well. The preacher must give a reason for the hope that is in him, and that he wishes to inspire in his hearers. Matters of legislation and of finance are directed largely by arguments from antecedent probability.

**In Common  
Affairs.**

The criminal lawyer has special need of the argument from antecedent probability. In the absence of direct evidence it is very difficult to convince a jury of the guilt of a person, without adducing a sufficient motive for the guilty

**In Criminal  
Prosecutions.**

<sup>1</sup> Freytag, *Technique of the Drama*, trans. by MacEwan, 32-36.



deed. Motive is to human conduct what cause is to phenomena in science. Even when we are convinced by direct evidence that a person has been guilty of wrong doing, we still naturally inquire *why* he did the wrong; what was his *motive*. Webster's defense of the Kenniston brothers under indictment for highway robbery on the person of Major Goodrich, is a familiar instance of the difficulty of establishing a proposition lacking antecedent probability. The theory of the defense was that Goodrich robbed himself, that is, the robbery was a fiction. The lack of sufficient motive for such a performance presents a difficulty quite evident in Webster's arguing:—

“It is next to be considered whether the prosecutor's story is either natural or consistent. But, on the threshold of the inquiry, every one puts the question, ‘What motive had the prosecutor to be guilty of the abominable conduct of feigning a robbery?’ It is difficult to assign motives. The jury do not know enough of his character or circumstances. Such things have happened, and may happen again. Suppose he owed money in Boston, and had it not to pay? Who knows how high he might estimate the value of a plausible apology? Some men have also a whimsical ambition of distinction. There is no end to the variety of modes in which human vanity exhibits itself. A story of this nature excites the public sympathy. It attracts general attention. It causes the name of the prosecutor to be celebrated as a man who has been attacked, and after a manly resistance, overcome by robbers, and who has renewed his resistance as soon as returning life and sensation enabled him, and, after a second conflict, has been quite subdued, beaten and bruised out of all sense and sensation, and finally left for dead on the field. It is not easy to say how far such motives, trifling and ridiculous, as most men would think them, might influence the prosecutor, when connected with any expectation

of favor or indulgence, if he wanted such, from his creditors. It is to be remembered that he probably did not see all the consequences of his conduct, if his robbery be a pretence. He might not intend to prosecute anybody. But he probably found, and indeed there is evidence to show, that it was necessary for him to do something to find out the authors of the alleged robbery. He manifested no particular zeal on this subject. He was in no haste. He appears rather to have been pressed by others to do that which, if he had really been robbed, we should suppose he would have been most earnest to do, the earliest moment.”<sup>1</sup>

No such difficulty presented itself in the case of the Knapps on trial for the murder of Captain White.

“It is said that Vanderpool<sup>2</sup> had no motive for killing his partner, Field. Field had been trying to sell out and go into other business. He had withdrawn five hundred dollars, and this did not please Vanderpool. Paper was falling due. Vanderpool needed money. . . . Here is just the motive, — need of money, wrangling, division.”<sup>3</sup>

“Forty men were indicted for train-wrecking on the Michigan Central Railroad, near Jackson. The railroad had recently passed from state control to a corporation. The state had always paid liberally for all animals killed by trains. The farmers along the road thus found a ready market for their animals, which they took little pains to keep off the track. The corporation refused to pay as liberally; and as a method of revenge the farmers entered into numerous schemes for wrecking trains.”<sup>4</sup>

“Isaac Pierce, when almost an old man, had repudiated the wife of his youth, who had passed with him through all the hardships of pioneer farm-life. He had married a handsome, scheming young widow. Dying, he left all of his vast estate to this younger woman, ignoring the claims of his former wife and her children. His motive evidently was the desire of a vain and weak old man to

**Vanderpool.**

**Train  
Wreckers.**

**Pierce Will  
Case.**

<sup>1</sup> *Select Speeches*, ed. A. J. George, 5-6.

<sup>2</sup> Page 55.

<sup>3</sup> *Modern Jury Trials*, 190.

<sup>4</sup> *Ibid*, 247.

please a dashing and designing woman who flattered his senile vanity.”<sup>1</sup>

Care must be taken that the assigned motives are not incongruous : —

“The shooting was the result of an insane impulse, the act of an irrational and irresponsible being ; it was done under the well-founded apprehension that it was necessary to the preservation of the defendant’s life, or against serious bodily harm.”<sup>2</sup>

Each side of a case may usually be supported by arguments of this class, their force varying according to the nature of the case, and other antecedent probabilities. Something may intervene between a cause and its natural effect. Motives may be counteracted. When need would prompt to theft, fear of detection might deter. When revenge would prompt to the wrecking of trains, horror at the loss of life occasioned, or at the certainty of punishment, might restrain from the crime. Where one’s inherited disposition would naturally lead to a life of dissipation and crime, the influence of friends, respect for public opinion, the restraints of education, and the fear of the law, might be stronger in an opposite direction. When senile vanity, responding to flattery, would disinheritor wife and children in favor of the flatterer, a sense of justice and conjugal or parental affection might prompt to the making of a subsequent will. Where covetousness and greed of gold would impel a depraved Knapp or Vanderpool to commit murder, the certainty of detection and the severity of punishment might deter.

<sup>1</sup> *Modern Jury Trials.*

<sup>2</sup> *Ibid.*

The cautious arguer will take into account the presence or absence of antecedent probabilities, whether for or against his proposition, whether his subject is in the realm of human action or of natural events.

He will carefully estimate their force. He will find some as strong as the probability that natural laws are constant, or human action uniform in similar circumstances. Others may prove as weak as the probability that a local shower in June will raise the price of September corn the world over, or that the failure of a village bank will demoralize national finances. He will also consider carefully whether or not his proposition admits of this kind of argument at all. The propositions, "The world, as we know it, is the product of special creation," and "The human race is descended from a single pair," could hardly be argued directly from antecedent probability, since we cannot calculate causes that might be operative before the beginning of creation. When this kind of argument can be used, and a conflict is found between antecedent probabilities, they are to be carefully weighed, and in the absence of other determining evidence, the matter is decided by the preponderance of probability.

**Preponderance of Probabilities.**  
**Examples.**

All the circumstances on the morning of the finding of Captain White's body, showed a strong preponderance of probability in favor of the theory that he came to his death by violence, and at the hands of some one well acquainted with the house, over any other theory. In the case of the American Colonies, with their agriculture, their fisheries, their growing commerce, their rapidly increasing population, and their intense love of liberty, it was much more probable that they would



successfully resist British oppression, than that they would submit to taxation without representation. Huxley finds a much stronger probability that the various equine forms explained in his lectures on evolution, represent stages in the process of development, than that they are instances of special creation. Theologians argue from the benevolence of the Creator that there is a preponderance of probability in favor of his making a revelation of himself to his creatures rather than leaving them in uncertainty. Some argue from the necessity of divine justice that the sins of men will receive eternal punishment; others argue from the power of divine love and mercy, that in the future life, all will be absolved from the consequences of sin, or that a new probation will be given.

“Those who disbelieve in the Christian miracles, argue from antecedent probability that what science calls ‘the order of nature’ cannot be disturbed; those who believe in the miracles, argue that there was an adequate cause for them: in this instance, the preponderance of probability is to some minds on the side of belief in miracles, to other minds on the side of disbelief.”<sup>1</sup> In his Liverpool speech Mr. Beecher asked Englishmen to decide upon antecedent probability whether a slave-holding South or a free South would give the better market for English wares. From their evident sympathy for the South and their efforts in behalf of that section, the preponderance of probability in their minds seemed to be in favor of a market of slave-holders.

Common sources of error in arguing from antecedent probability are, — assuming causes and motives which

<sup>1</sup> A. S. Hill, *Principles of Rhetoric*, 366.

are not such at all — *non causa pro causa*<sup>1</sup> — and which are not adequate to account for the phenomena, or which account for but part; attributing too much to a certain cause or motive, *non sequitur*, and neglecting other possible causes and motives; and ignoring, or paying too little attention to what makes against the arguer's theory.<sup>2</sup> A thorough mastery of the subject and a careful study of relations, will enable the honest reasoner to avoid these errors. Nothing is more common than to hear honesty, industry, perseverance, early rising, temperance, singleness of purpose, economy, and each of the cardinal virtues in turn, cited as the sole cause of one's "getting on in the world."<sup>3</sup> As a matter of fact, no one of these causes alone is adequate, and frequently many of them combined fail unless united with still other forces operating in favorable circumstances. The arguer of sane judgment analyzes cases and exhibits relations; the "crank" assumes a single cause of all ills, and a single cure. In the case of the Knapp brothers Webster did not consider the motive alone sufficient to establish guilt; he showed them to be men unscrupulous in character; he adduced positive circumstances to corroborate what was only one element of probability.

"They who have made but superficial studies in the natural history of the human mind, have been taught to look on religious opinions as the only cause of enthusiastic zeal and sectarian propagation. But there is no doctrine whatever, on which men can warm, that is not capable of the very same effect. The social nature of man impels him to propagate his principles, as much as physical impulses urge him to propagate his kind. The passions give zeal and vehemence. The under-

<sup>1</sup> Page 118.<sup>2</sup> Page 121.<sup>3</sup> Page 119.

standing bestows design and system. The whole man moves under the discipline of his opinions.”<sup>1</sup>

There is too much reasoning — or the lack of it — like that of Stevenson’s companions in the second cabin. “They did not perceive relations, but leaped to a so-called cause, and thought the problem settled.

**Emigrant Reasoning.**

Thus the cause of everything in England was the form of Government, and the cure for all evils was, by consequence, a Revolution. It is surprising how many of them said this, and that none should have had a definite thought in his head as he said it. Some hated the Church because they disagreed with it; some hated Lord Beaconsfield because of war and taxes; all hated the masters, possibly with reason. But these feelings were not at the root of the matter; the true reasoning of their souls ran thus — ‘I have not got on; I ought to have got on; if there was a revolution I should get on.’ ‘How?’ They had no idea. ‘Why?’ ‘Because — because — well, look at America.’”<sup>2</sup>

Another common error is to base an argument from antecedent probability on a fiction lacking all probability, instead of basing it on actual facts or events from experi-

**Probability Based on Fiction.**

ence. This fallacy involves the same principle as arguing from invented examples,<sup>3</sup> or from premises arbitrarily chosen. Whately’s illustration<sup>4</sup> is a good as any: —

“The fable of the countryman who obtained from Jupiter the regulation of the weather, and in consequence found his crops fail, does not go one step toward proving the intended conclusion; because that consequence is a mere gratuitous assumption without any probability to support it. In fact the

<sup>1</sup> Burke.

<sup>2</sup> R. L. Stevenson, *The Amateur Emigrant*, 148.

<sup>3</sup> See Page 149.

<sup>4</sup> *Rhetoric*, 130.

assumption there is not only gratuitous, but is in direct contradiction to experience ; for a gardener *has*, to a certain degree, the command of rain and sunshine, by the help of his watering pots, glasses, hot-beds, and flues ; and the result is not the destruction of his crops."

A fable, a story or an imaginary case, may like metaphor or simile, illustrate a principle or make it more impressive, but must not be offered in proof. Too much juvenile literature is of this sort. "Be good and you will be happy" is the theme ; and Imaginary Cases. boys and girls of impossible goodness are made, at the end of the story, to attain impossible happiness, — and the proposition is proved. From Gladstone's strictures on *Robert Elsmere*, it might seem that more pretentious stories are not always entirely free from this fault. A sophist not infrequently "supposes a case," and then uses his supposititious facts, incidents and results, as if they were real instances ; if they *were real* and enough of them were adduced, they would have some force as arguments, but being assumed, they prove nothing.<sup>1</sup>

Arguments from antecedent probability vary in force. They may amount to practical certainty ; they may be mere guesses. They may be as strong as the probability that the sun will continue to rise and set, or no stronger than the probability that it will Varying Force. be fair weather the Fourth of July. Their force depends upon the closeness of causal relation, the adequacy of the cause or strength of motive and the certainty of its operation, and the absence of anything to hinder or modify its natural results. In scientific

<sup>1</sup> Page 149.



matters arguments from antecedent probability may amount to demonstration; in deliberative bodies, they may amount to a basis for voting; in practical affairs, to a reasonable basis for action. They have more force in scientific matters than in social, since the laws of the physical universe are more stable and uniform than the laws of human conduct. They have to the common mind, more force in familiar practical affairs where all men have a similar breadth of experience, than in more remote or unfamiliar matters.

Arguments from Example are based upon resemblance.<sup>1</sup> Their cogency lies in men's belief that what has happened once in certain circumstances, or under cer-

<b>Arguments from Example.</b>	tain influences, will in similar circumstances or under similar influences happen again; or that persons, objects, acts, events, alike in several respects connected with the point in question, will be alike in the point in question. In this class of arguments logical sequence usually coincides with chronological, but it may be the reverse. That from which the argument is drawn, may be contemporary with that toward which the argument is directed, or even subsequent to it. The argument from example differs from induction in that it may use fewer instances, and argue from one or more single instances to another single instance as well as to a general law; but like induction its basis is experience or observation. Its purpose is not to tell <i>why</i> a thing is so, but to induce the belief that it <i>is</i> so. When it goes from a case under a certain principle to another case similar to this, it does not necessarily state the principle. From like-
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<sup>1</sup> Page 124.

ness in cases it infers a likeness in results. Without seeking to show the cause of a result, it seeks to show that the result exists.

In his speech *On American Taxation*, Burke argued from example, — ‘You tried in Wales to raise a revenue which the people thought excessive and unjust: the attempt ended in oppression, resistance, rebellion and loss to yourselves. You tried <sup>Illustrations.</sup> in the Duchy of Lancaster to raise a revenue which the people believed unjust: this effort ended in oppression, rebellion, vexation and loss to yourselves. You are now trying to raise in America a revenue which the Colonists disapprove. What must be the result?’

In this example the general principle is not stated. In the following paragraph from his *Speech on Conciliation*, the rule is stated and the examples are adduced to sustain a case, that of the Colonies, under it:—

“In large bodies the circulation of power must be less vigorous at the extremities. Nature has said it. The Turk cannot govern Egypt and Arabia and Kurdistan as he governs Thrace; nor has he the same dominion in Crimea and Algiers which he has at Brusa and Smyrna. Despotism itself is obliged to truck and huckster. The Sultan gets such obedience as he can. He governs with a loose rein that he may govern at all; and the whole of the force and vigor of his authority in his centre is derived from a prudent relaxation in all his borders. Spain, in her provinces, is, perhaps, not so well obeyed as you are in yours. She complies, too. She watches times. This is the immutable condition, the eternal Law of extensive and detached Empire.”<sup>1</sup>

In the *Speech on Conciliation* his general arguments from example may be condensed thus: ‘Nothing could

<sup>1</sup> *Select Works*, I. 184.

ever have made Ireland English in civility and allegiance, but English laws and English forms of legislature; not English arms, but the English constitution conquered Wales; Chester, civilized as well as Wales, demonstrated that freedom, not servitude, is the cure for anarchy; in the case of Durham, parliament recognized the equity of not suffering any district in which British subjects may act in a body, to be taxed without their own voice in the grant. If the force of their examples in the acts of parliament avail anything, what can be said against applying them with regard to America? The cases are parallel in every essential particular.' In these cases, two or more examples are adduced.

A single example in which there are many resemblances or a complete resemblance, may have great force. A horse of a given size, age, conformation, breeding, disposition, training, soundness, is a fast trotter. Men argue that another horse, of the same size, age, conformation, breeding, disposition, soundness, will with the same training be a fast trotter; and they are so certain of this that, trusting to these resemblances, they will pay a large price for such an animal. In such cases if the points of resemblance are thought of as causes of which the point in question is an effect, the argument becomes one from antecedent probability. If numerous instances are used to establish the causal relation and arrive at a law, the process is an induction. But if the resemblances are thought of only as facts, the argument is from example.

Real examples are drawn from actual experience or observation; fictitious examples are imaginary cases

**Single  
Examples.**

resembling the case in hand. Real examples may have force as arguments; fictitious examples may illustrate a principle, but they rarely help to prove it. If the principle itself is in dispute, no supposed case under that principle will help to establish it.<sup>1</sup> The proposition that a public school is

**Real and  
Fictitious  
Examples.**

better than a private school, is not supported by a fictitious account of the success of pupils in such a school and the failure of the pupils in the other kind of school. Some one else may just as well tell a story reversing the results. Such an invented example involves a begging of the question,<sup>2</sup> while a sufficient number of such examples, if real, would raise a strong probability in favor of the public school. If a fictitious example has any force as an argument, it is because what is supposed to be, naturally *would* be. Antecedent probabilities have been observed. It has its basis in actual experience. It merely uses old materials in a new combination. "Fiction can help us more clearly to understand or more firmly to hold what we are already disposed to believe; but, the premises of fiction being arbitrarily selected, its conclusions can be binding upon those only who accept the premises as fairly representing real examples."<sup>3</sup>

The value of instruction or argument by fable lies in assigning to the conduct of animals the same controlling principles which ordinarily govern the actions of reasoning beings.

**Fable.**

In every-day affairs men act on inferences from example. The merchant sells a customer goods on credit, and expects payment according to the customer's

<sup>1</sup> Page 144.    <sup>2</sup> Page 97.    <sup>3</sup> A. S. Hill, *Principles of Rhetoric*, 359.



previous promptness or delinquency ; or a new customer is given credit, the salesman relying on the example of the class to which this customer belongs. A buyer, mindful of Jewish shrewdness on a former occasion, or remembering the reputed keenness of the class, is on his guard when dealing with a Jew. Many a student goes to college, merely following the example of a friend.

**Examples  
in Every-  
day Life.**

In every instance, a general principle operating in another case is applied to the case under discussion. "The attempted oppression of a spirited people ends in failure." "The spirit of the English constitution is the most potent factor in the management of English dependents." "Character is the result of blood and education." "Prohibition prohibits." "Education imposes restraint." "The world-intellectual does move." "Peaceable means may be effective." It must be remembered that the reasoning is not conclusive, but only raises a greater or less degree of probability.

**Application  
of a Princi-  
ple.**

Most argumentation in law proceedings consists in applying to a new case, either a well-established definition or a principle involved in cases already decided and governing them. These definitions, whether fixed by statutes or by court decisions, are generally based on former cases. Erskine's defence of Lord George Gordon,<sup>1</sup> under indictment for high treason, and Webster's speech on the trial of the Knapps for conspiracy and murder,<sup>2</sup> afford well-known instances of the application of a definition. Usually, however, the method, specially in civil cases,

**Example in  
Law Cases.**

<sup>1</sup> Goodrich's *British Eloquence*, 637.

<sup>2</sup> Page 282.

is one of example. The case may involve the ownership of property, damages for breach of contract, the right of way, the possession of a child, or innumerable other things. When the evidence to establish facts has been presented, other cases involving similar facts are collected and collated. The general principle running through all these cases and determining them, is discovered and applied to the case in hand. In most cases many issues arising in the progress of the trial, and subordinate to the general issue, must be decided in this way.

“The law is a vast system of minute regulations, developed by the application of a few great principles to the affairs of men. Whenever the application of these principles to one condition of affairs has resulted in the formal statement of a rule, that rule becomes the law for all identical conditions of affairs. And as these principles can never change, when a new case arises the rules which it demands must correspond with pre-existing rules in such proportion as the new condition of affairs is like the old. This mode of reasoning from similarities is analogy (example). In its syllogistic<sup>1</sup> form the minor premise asserts the similarity between the case decided and the present case. The major states the doctrine of the cited case, and the conclusion predicates the same rule of the case at bar. The error of which, in this form of inference, there is great danger, will always be found in the minor premise. The doctrine of the cited case is generally clear enough to defy serious attack; but the assertion of such similarity between the cases as warrants the extension of the rule to both, is often utterly without foundation. Hence, in employing analogous cases (examples) as the basis of his inferences, the advocate should formulate his dangerous premise with special care, and thoroughly test its accuracy and truth. It is in this department of legal inference that the most splendid triumphs of forensic reasoning

<sup>1</sup> Page 90.

are achieved. It may win a cause to discover and produce an exactly parallel case from an authoritative court.”<sup>1</sup>

The argument *a fortiori* is a special kind of argument from example. It shows that if a certain principle is applicable to another case mentioned, as it is conceded to be, it is much more applicable to the case in question.

“Wherefore if God so clothe the grass which to-day is, and to-morrow is cast into the oven, shall he not much more clothe you, O ye of little faith?”<sup>2</sup>

“If ye then, being evil, know how to give good gifts unto your children, how much more shall your Heavenly Father give the Holy Spirit to them that ask Him?”<sup>3</sup>

“Are not two sparrows sold for a farthing? And one of them shall not fall to the ground without your Father. Fear ye not, therefore, ye are of more value than many sparrows.”<sup>4</sup>

This has always been a favorite argument of forensic orators. It can be made very forceful to the simplest mind:—

“But it seems that Lord George ought to have foreseen that so great a multitude could not be collected without mischief. Gentlemen, we are not trying whether he might or ought to have foreseen mischief, but whether he wickedly and traitorously *preconcerted and designed it*. But if *he* be an object of censure for not foreseeing it, what shall we say to *government* that took no steps to prevent it, that issued no proclamation warning the people of the danger and illegality of such an assembly? If a peaceable multitude, with a petition in their hands, be an army, and if the noise and confusion inseparable from numbers, though without violence or the purpose of violence, constitute war, what shall be said of that *government* which remained from Tuesday to Friday, knowing that an army was collecting to levy war by public advertisement, yet had not

<sup>1</sup> Robinson, *Forensic Oratory*, 111.

<sup>2</sup> Matthew vi. 30.

<sup>3</sup> *Ibid*, vii. 11.

<sup>4</sup> *Ibid*, x. 29.

a single soldier, no, nor even a constable, to protect the state?"<sup>1</sup>

Arguments from example vary in force. The degree of force depends upon the number of instances, the number of resemblances, the points of resemblance, — whether they are accidental or essential, — and the points of difference. The more nearly the cases approach to identity, the more force the example presents as an argument. From the analysis of a single ray of sunlight into the prismatic colors, it was justly concluded that all rays would by the same analysis give the same results. There would be the same certainty with a drop of distilled water under analysis. "A single experiment is frequently devised by which a theory must stand or fall. Of this character was the determination of the velocity of light in liquids as a crucial test of the Emission Theory. According to it, light traveled faster in water than in air; according to the Undulatory Theory, it traveled faster in air than in water. An experiment suggested by Arago, and executed by Fizeau and Foucault, was conclusive against Newton's Theory."<sup>2</sup> A single experiment with bodies of different densities falling in a vacuum, would be sufficient to establish the principle of equal times. When Pasteur had succeeded in perfectly excluding the air from the matter in which all living organisms had been destroyed by heat, he concluded from a very few instances, "that the infusoria, which had been attributed to spontaneous generation, were developed from little minute spores or eggs, which were

Varying  
Force of  
Examples.

<sup>1</sup> Goodrich, *British Eloquence*, 551.

<sup>2</sup> Tyndall, *Fragments of Science*, 469.



constantly floating in the air, and which lose their power of germination if subjected to heat." But examples have much less probative force, when they involve the motives, desires, ability and character of men. "One man is not so exactly similar to another man, one race of men is not so exactly similar to another race of men, one political community is not so exactly similar to another political community, as one piece of platinum is to another piece of platinum, or as one vial of oxygen is to another vial of oxygen."

Goldsmith, Scott, Swift, Irving and Beecher, were dull as school boys, but in mature life exhibited marked genius in certain directions. Many a parent, therefore, finds consolation for a child's stupidity in school from the example of these men, when perhaps the only resemblance is in their stupidity.

People not accustomed to the collection and critical examination of data, are liable to infer a case under a general rule or principle from too few and insufficient instances. Franklin, Lincoln, Garfield, who were self-made men, rose to eminence in public life; it is, therefore, inferred that other self-made men will be more likely to rise than if they had been blessed with greater advantages in youth. It is inferred from a few instances that a certain rich man is heartless, that a certain capitalist has no regard for labor, that a bank cashier is a thief, that a squint-eyed man is morally crooked. In all these cases the careful examination of many instances would show that the conclusion might be false. Those making such inferences have either known only self-made men who became famous, or have ignored the other class; they have known

**Fallacies.**  
**Too Few**  
**Examples.**

only miserly rich men and hard-hearted employers, their own bank cashier, and a few men "with a cast in the eye."<sup>1</sup>

No fallacy is more common than reasoning from one particular to another particular without the requisite precaution as to the essential resemblances and differences. Caution against this fallacy is the moral of one of the fables of Camerarius. Two don- **Ignoring Differences.** keys were traveling in the same caravan, the one laden with salt, the other with hay. The one laden with salt stumbled in crossing a stream; the salt melted and his burden was lightened. When they came to another stream, the donkey that was laden with hay, dipped his panniers into the water, expecting a similiar result."<sup>2</sup> No inference to an unobserved case is sound unless it is of a like kind with the observed case or cases on which it is founded; that, is, unless we are entitled to make a general proposition. The donkey might have reasoned, "Salt dipped in water is lightened; sugar dipped in water is lightened; *anything dipped in water is lightened*; I will dip this bale of hay in water."

To give the example force as an argument, it is not sufficient that the resemblances be real, sufficient, and in essential particulars; but there must be no such differences in the cases as will destroy the probability from resemblance. It was calculated **Cases Not Parallel in all Respects.** that great profits would accrue from the Panama Canal, because the Suez Canal had yielded great profits. But though these would both be *canals*,

<sup>1</sup> See Fallacies of Induction, Page 118.

<sup>2</sup> Minto, *Inductive Logic*, 266.

and might be under the same management, the difference in difficulty of construction, in situation relative to great commercial routes, and in many other particulars, would destroy the force of the argument. It is argued that the prohibitory liquor law has been effective in Maine, and therefore will be effective elsewhere. On this argument a recent writer in *The Nation* says : —

“ Any impartial observer would, I think, have to admit that the success of the prohibitory law in this State, although significantly qualified, is, after all considerable. But I cannot think that the experience of Maine affords any warrant for the belief that a similar system would have equal or greater success elsewhere. I am, of course, aware that that kind of argument is common with professional advocates of prohibition ; nevertheless, the position seems to me to be at once dangerous and unsound. The prohibitory law has been as successful as it has in Maine, not because of anything especially good either in the general principle or in this particular application of it, but very largely because of certain social conditions peculiar to the State. Maine is a thinly settled State, with a population chiefly engaged in agriculture, lumbering and the fisheries. Its cities have all less than 40,000 inhabitants, and all but one have less than 25,000 ; there is no massing of population, and no overwhelming foreign element. The great manufacturing industries of New England are not largely represented in Maine. It is apparent that conditions such as these greatly simplify all problems of law and order, and give any kind of sumptuary legislation a favorable field. Moreover, even rigid enforcement of the prohibitory law would not necessarily prevent any individual from obtaining liquors for his own use, for the simple reason that adjoining States, not under the prohibitory régime, at once become sources of supply. If Maine could not obtain an abundant supply of liquors from Boston or some other convenient point, the enforcement of the prohibitory law here would be very much less efficient than it is now. That is

to say, even with the aid of favorable local conditions the success of prohibition in one State depends very greatly upon the absence of prohibition in neighboring States ; and it should not be forgotten that in this country the system has always been tried under these conditions. To insist upon the universal practicability of prohibition as a method of regulating the liquor traffic, pointing meanwhile to the operation of the law in Maine as an illustration of 'how it works,' is both idle and misleading unless these vital qualifications be also made."

Not infrequently, in political discussions, an instance is brought forward as proof, when, in fact, the differences are so numerous and radical that the instance is not an example at all :—

"It is stated that the Bank of France maintains the parity of gold and silver in that country by paying out both metals indiscriminately and at its own option. From this it is argued that we could do the same if the treasury would exercise the same option. The fact is, that parity between the silver five-franc pieces and the gold coins has been maintained by stopping the coinage of silver and restricting the amount of five-franc pieces to the quantity in circulation twenty years ago. This was an act of the Government, not of the Bank of France, which is a private institution owned and managed exclusively by the shareholders. It is true that the Bank does exercise an option in paying out silver or gold when its notes are presented for redemption. It makes a profit by doing so. The operation has nothing whatever to do with maintaining the parity of the two metals. In fact it produces the only disparity which exists there."<sup>1</sup>

"Jefferson drafted the Declaration of Independence at the age of thirty-three ; John Jay drew up the Constitution of the State of New York at the age of thirty-two ; Hamilton organized the national financial system before he was thirty-four ; Clay was a distinguished Senator at thirty ; Calhoun was Secretary of War at thirty-six ; Sheridan and McClellan

<sup>1</sup> *The Nation*.



were generals at thirty-five ; Napoleon was the greatest man of Continental Europe at thirty-five ; and long before that age William II. was emperor of the mightiest nation of Europe ; and many other *young* men have placed indelible marks on the pages of the world's history. Hence it is inferred that the age — thirty-six years — of a candidate for the presidency of the United States is no objection to his election, the principle being that men of genius reach the full development of their intellectual power and the control of their abilities before the age of thirty-six. These examples multiplied many times over have little force as arguments with the majority of intelligent electors. Granting close resemblance in ability and genius, there are so many differences in essential points, — political conditions, temper of the people, ends to attain, variety and extent of responsibilities, number and importance of interests to harmonize, — that many conservative people would not consider the cases parallel.”<sup>1</sup>

Analogy, also called parity of reasoning, is a kind of argument from example. It has been variously defined. The resemblance from which the inference is made, is held by Whately to be rather of relations than of things or qualities. “Analogy being a  
**Analogy.**  
**Different** of things or qualities. “Analogy being a  
**Definitions.** ‘resemblance of ratios,’ that should strictly be called an argument from analogy, in which the two things (*viz.* the one *from* which, and the one *to* which, we argue) are not, necessarily, themselves alike, but stand in similar *relations* to some other things ; or, in other words, that the common *genus* which they both fall under, consists in a *relation*. Thus an egg and a seed are not in themselves alike, but bear a like relation, to the parent bird and to her future nestling, on the one hand, and to the old and the young plant on the other, respectively ; this *relation* being the genus which both fall

<sup>1</sup> *New York World.*

under: and many arguments might be drawn from this analogy.”<sup>1</sup>

No distinction is made by Professor Hart<sup>2</sup> between example and analogy. “We may regard analogy as a non-scientific practical induction-deduction, or *inferring from resemblances*. A sells to B on credit; the ground of his confidence is, perhaps, the circumstance that B has already paid him several times for similar articles. From this he infers a permanent willingness and ability in B, i. e., a general principle applicable to this particular instance.” Most of the illustrations of argument from example already cited, are of this kind.

Other  
Definitions.

Professor Hill<sup>3</sup> makes analogy an argument from example in which the principle is only implied: “In the class called argument from parallel cases or from analogy, the examples cited are also instances of the operation of a general principle, but that principle is usually not expressed; the reasoner seems to leap from one case to another.” If Patrick Henry had said, “He who rules by violence, may expect to meet death by violence: Cæsar had his Brutus, Charles I., his Cromwell,” he would, according to this distinction, have employed an argument from example. Omitting the principle illustrated, and going from the cited cases to the case in question, George III., he argued from analogy.

Again,<sup>4</sup> the argument from analogy is made to take “relations that exist in one sphere of life or experience, as indications of what may be regarded as true of another sphere whose relations are similar.” This is

<sup>1</sup> *Rhetoric*, 115.

<sup>2</sup> J. M. Hart, *English Composition*, 116.

<sup>3</sup> *Principles of Rhetoric*, 361.

<sup>4</sup> Genung, *Practical Rhetoric*, 422.

illustrated by Cardinal Newman's argument from physical health that mental culture is a good in itself, aside from its practical use.

Some of Lincoln's best arguments in answer to the criticisms made upon his administration were of this kind. The worst critics were those who complained about the war's not moving fast enough. To a party of such men from the West, he once said :—

“Gentlemen, I want you to suppose a case for a moment. Suppose that all the property you were worth was in gold, and you had put it in the hands of Blondin, the famous rope-walker, to carry across the Niagara Falls on a tight rope. Would you shake the rope while he was passing over it, or keep shouting to him, ‘Blondin, stoop a little more ! Go a little faster !’ No, I am sure you would not. You would hold your breath as well as your tongue, and keep your hand off until he was safely over. Now, the government is in the same situation. It is carrying an immense weight across a stormy ocean. Untold treasures are in its hands. It is doing the best it can. Don't badger it ! Just keep still, and it will get you safely over.”

Huxley argues from analogy in this sense, to support the proposition that when one is ill, the best thing to do is to call a physician :—

“People who wear watches know nothing about watch-making. A watch goes wrong and it stops ; you see the owner giving it a shake, or, if he is very bold, he opens the case and gives the balance-wheel a push. That is empirical practice, and you know what are the results upon the watch. I should think you can divine what are the results of analogous operations upon the human body. And because men of sense very soon found that such were the effects of meddling with very complicated machinery they did not understand, I suppose the first thing, as being the easiest, was to study the nature of the works of the human watch, and the next thing was to study the way the parts worked together, and the way the watch

worked. Thus, by degrees, we have had growing up our body of anatomists, or knowers of the construction of the human watch, and our physiologists, who know how the machine works. And just as any sensible man who has a valuable watch, does not meddle with it himself, but goes to someone who has studied watch-making and knows what the effect of doing this or that may be ; so I suppose the man who, having charge of that valuable machine, his own body, wants to have it kept in good order, comes to a professor of the medical art, for the purpose of having it set right, believing that by deduction from the facts of structure and from the facts of function the physician will divine what may be the matter with his bodily watch at that particular time, and what may be the best means of setting it right.”<sup>1</sup>

From these definitions and illustrations, it seems agreed that analogy is a sort of imperfect induction, an inference from particular or individual instances to a coördinate particular instance.

Summary.

Professor Minto makes this clear, and extends analogy beyond its older meaning<sup>2</sup>: —

“In a strict logical sense, however, as defined by Mill, and sanctioned by the previous usage of Butler and Kant, analogy means more than a resemblance of relations. It means a preponderating resemblance between two things such as to warrant us in inferring that the resemblance extends further. This is a species of argument distinct from the extension of an empirical law. In the extension of an empirical law, the ground of inference is a coincidence frequently repeated within our experience, and the inference is that it has occurred or will occur beyond that experience : in the argument from analogy, the ground of inference is the resemblance between two individual objects or kinds of objects in a certain number of points, and the inference is that they resemble one another in some other point, known to belong to the one, but

<sup>1</sup> *Science and Education Essays*, 311.

<sup>2</sup> *Logic, Inductive and Deductive*, 368.



not known to belong to the other. 'Two things go together in many cases, therefore in all, including this one,' is the argument in extending a generalization: 'Two things agree in many respects, therefore in this other,' is the argument from analogy.

"The example given by Reid in his *Intellectual Powers* has become the standard illustration of the peculiar argument from analogy.

"We may observe a very great similitude between this earth which we inhabit, and the other planets, Saturn, Jupiter, Mars, Venus and Mercury. They all revolve round the sun, as the earth does, although at different distances and in different periods. They borrow all their light from the sun, as the earth does. Several of them are known to revolve round their axis like the earth, and by that means have like succession of day and night. Some of them have moons that serve to give them light in the absence of the sun, as our moon does to us. They are all, in their motions, subject to the same law of gravitation as the earth is. From all this similitude it is not unreasonable to think that these planets may, like our earth, be the habitation of various orders of living creatures. There is some probability in this conclusion from analogy.'"

The difference between analogy and induction seems to be one of degree. Analogy agrees with induction in this, that they both argue that a thing known to resemble another in

**Analogy and  
Induction.**

certain circumstances, will resemble it in another circumstance. From the fact that there are numerous resemblances between the earth and the other planets, it might be inferred that the latter are inhabited, because the former is. This non-assignable and generally small increase of probability, beyond what would otherwise exist, is all the evidence which a conclusion can derive from analogy. Now if the existence of human beings could be proved to depend upon one or more of these points of resemblance, to be the effect of this or that cause which is in operation on the other planets, as well as on the earth; or if it could be proved that the presence of human beings is the effect of some circumstance not common to the other planets and the earth,

the argument drawn from such facts of causation would in each case be of an inductive character.<sup>1</sup>

A distinction is to be made between analogies which are merely illustrative or explanatory and such as are argumentative. George Eliot makes Mr. Snell, the plain, hard-headed landlord in *Silas Marner*,<sup>2</sup> attempt to show by analogy how it is that some people cannot see a ghost: —

**Argumentative and Illustrative Analogies.**

“There’s folks, i’ my opinion, they can’t see ghos’es, not if they stood as plain as a pike-staff before ’em. And there’s reason i’ that. For there’s my wife, now, can’t smell, not if she’d the strongest o’ cheese under her nose. I never see’d a ghost myself; but then I says to myself, ‘Very like I haven’t got the smell for ’em.’ I mean, putting a ghost for a smell, or else contrariways. And so I’m for holding with both sides; for, as I say, the truth lies between ’em. And if Dowlas was to go and stand and say he’d never seen a wink o’ Cliff’s Holiday all the night through, I’d back him; and if anybody said as Cliff’s Holiday was certain sure for all that, I’d back *him* too. For the smell’s what I go by.

“The landlord’s analogical argument was not well received by the farrier.”

This may help the dull perception of some of the guests of the “Rainbow,” but it proves nothing.

Between the safe direction of a ship and the wise direction of public affairs, there is an analogy having force as an argument. In both cases officers are to be chosen for their ability, trustworthiness and special skill. Whatever may be true of its occasion, Mr. T. B. Reed’s analogy, in a paragraph from a campaign speech,<sup>3</sup> is sound and founded in experience: —

**Government and Ship.**

“Two months ago no man of any standing would have risked

<sup>1</sup> See Mill, *Logic*, 553.

<sup>2</sup> Part I., Chap. vi.

<sup>3</sup> 1896.

his reputation as a prophet by hinting the slightest doubt of Republican success. Four years of actual trial of the opposition, under the guidance of its best and twice-trusted leader, has left no shadow of question as to public duty.

"Human experience in every walk of life teaches us that those who have blundered will blunder again, and that the wisest course is not to employ a ship captain who has just emerged from his last shipwreck, but the sailor who has never lost a ship, a passenger or a letter, but has held safe through every sea. He may have lost masts and sails and even been rudderless for hours, but if he has every time come safe to shore, better have him than all the landsmen who are forever shouting what they can do, and never dare to tell of what they have done. Boasters are worth nothing. Deeds are facts and are forever and ever. Talk dies in the empty air. Better a pound of performance than a shipload of language. The cause of all our troubles is the rapid deterioration of our public men. When a ship runs on a mudbank in broad daylight, with the charts unrolled and the instruments of navigation in good order, the cause is not the ship herself, nor the passengers, nor the mudbank, nor the daylight, but the captain or the pilot."

Many homely proverbs owe their force to the analogy lurking in them: "Don't count your chickens before they are hatched;" "Don't swap horses while fording a stream;" "He who by the plow would thrive, himself must either hold or drive;" "Don't pay too dear for the whistle;" "You can't eat your cake and have it too." "The lucky guesses of what is known as natural sagacity, are often analogical. A man of wide experience in any matter, such as the weather or the conduct of men in war, in business, or in politics, may conclude as to the case in hand, from some previous case that bears a general resemblance to it; and very often his conclusions may be perfectly

**Analogy in  
Proverbs.**

sound though he has not made a numerical estimate of the data.”<sup>1</sup>

Webster argues from the analogy between the blood in the human system and money in circulation, to show the evils of a disordered finance:—

“When the fluid in the human system, indispensable to life, becomes disordered, corrupted or obstructed in the circulation, not the head, nor the heart alone suffers ; but the whole body,—head, heart and hand, all the members, and all the extremities,—is affected with debility, paralysis, numbness and death. The analogy between the human system and the social and political system is complete ; and what the life blood is to the former, circulation, money, currency, is to the latter ; and if that be disordered or corrupted, paralysis must fall on the system.”<sup>2</sup>

**Blood and Money.**

Colonel Ingersoll argues from analogy to prove that the Pentateuch could not have been written by Moses :

“In the thirtieth chapter of Exodus we are told that the people, when numbered, must give each one a half shekel after the shekel of the sanctuary. At that time no such money existed, and consequently the account could not by any possibility have been written until after there was a shekel of the sanctuary, and there was no such thing until long after the death of Moses. If we should read that Cæsar paid his troops in pounds, shillings and pence, we would certainly know that the account was not written by Cæsar, nor in his time ; but we would know that it was written after the English had given these names to certain coins.”<sup>3</sup>

**Moses and Cæsar.**

“The notion that epidemic diseases may be due to germs which float in the atmosphere, enter the body, and produce disturbance by the development within the body of parasitic life, is founded on the perfect parallelism of the phenomena of contagious diseases with those of life. As a planted acorn gives birth to an oak

**Diseases and Vegetable Life.**

<sup>1</sup> Minto, *Logic Inductive and Deductive*, 372.

<sup>2</sup> *Speech at Saratoga.*      <sup>3</sup> *Some Mistakes of Moses*, 227.



competent to produce a whole crop of acorns, each gifted with the power of reproducing its parent tree ; and as thus from a single seeding a whole forest may spring ; so, it is contended, these epidemic diseases literally plant their seeds, grow and shake abroad new germs, which meeting in the human body their proper food and temperature, finally take possession of whole populations. There is nothing to my knowledge in pure chemistry which resembles the power of self-multiplication possessed by the matter which produces epidemic diseases. If you sow wheat, you do not get barley ; if you sow small-pox you do not get scarlet fever, but small-pox indefinitely multiplied, and nothing else. The matter of each contagious disease reproduces itself as rigidly as if it were (as Miss Nightingale puts it) dog or cat.”<sup>1</sup>

The argument from analogy, as well as from simple example, is valuable chiefly where the parallel conditions are broad and obvious. It adds clearness and impressiveness rather than probative force.

**Use of  
Analogy.**

Its chief use is to drive home those general truths that need verification less than illumination and application. It is employed in enforcing prudence in practical affairs, a policy in public business, rightness in morals and religion, and in giving direction to human conduct. The analysis of almost any serious political speech will show the argument to turn upon the fact that *similar* measures have been profitably adopted in a *similar* condition of affairs in the speaker's country, or in another country *similarly* constituted.

Analogies vary in force according to the number and closeness of resemblances in relations. If these approach identity the analogy is cogent as an argument. If the two cases are identical the argument becomes scientific

<sup>1</sup> Tyndall, *Fragments of Science*, 132.

and conclusive. From a mere similarity of conditions only a probability may be inferred, the degree of probability increasing as the conditions are more nearly identical. "To insure a reasonable degree, two practical rules should be observed: Discover as many points of resemblance as possible; and examine closely the points of difference to see whether they are accidental, — that is, not essential to the present question."<sup>1</sup>

**Varying  
Force of  
Analogy.**

False analogies arise from imagining a resemblance where none exists; from mistaking apparent resemblances for real ones; from treating accidental resemblances as essential; from inferring from a single resemblance, too few resemblances or fanciful resemblances; or from ignoring differences in points essential to the question. To argue from the evaporation of water and its return as dew, to a financial system, would be imagining a resemblance from the word "circulation." To argue from the fatal physical effects of enlargement of the heart to fatal commercial effects of the overgrowth of a metropolis, is to take an apparent resemblance for a real one; and it is also to ignore a difference in an essential point. To argue from paternal discipline to despotic government is to mistake accidental resemblances for essential: the element of absolute power in the father is not so essential as his wisdom, affection and goodness, which a government may entirely lack; besides the subjects of any government, the aggregate people of any nation, are not children. This, also, is arguing from too few resemblances.

**False  
Analogies.**

<sup>1</sup> J. M. Hart, *Handbook of English Composition*, 117.

In his *Reply to Hayne*, Webster frequently points out the fallacy in that gentleman's analogies:—

“The gentleman had remarked on the analogy of other cases, and quoted the conduct of European governments towards us, their own subjects settling on this continent, as in point, to show that we had been hard and rigid in selling, when we should have given the public lands to settlers without price. I thought the honourable member had suffered his judgment to be betrayed by a false analogy; that he was struck with an appearance of resemblance where there was no real similitude. I think so still. The first settlers of North America were enterprising spirits, engaged in private adventure, or fleeing from tyranny at home. When they arrived here, they were forgotten by the mother country, or remembered only to be oppressed. Carried away again by the appearance of analogy, or struck with the eloquence of the passage, the honourable member yesterday observed that the conduct of government towards the Western emigrants, or my representation of it, brought to his mind a celebrated speech in the British Parliament. It was, Sir, the speech of Colonel Barré. On the question of the Stamp Act, or tea tax, I forget which, Colonel Barré had heard a member on the treasury bench argue that the people of the United States, being British colonists, planted by the maternal care, nourished by the indulgence and protected by the arms of England, would not grudge their mite to relieve the mother country from the heavy burden under which she groaned. The language of Colonel Barré, in reply to this, was, ‘They planted by your care! Your oppression planted them in America. They fled from your tyranny, and grew by your neglect of them. So soon as you began to care for them, you showed your care by sending persons to spy out their liberties, misrepresent their character, prey upon them, and eat out their substance.’

“And how does the honourable gentleman mean to maintain that language like this is applicable to the conduct of the government of the United States towards the Western emigrants, or to any representation given by me of that conduct? Were

the settlers in the West driven thither by our oppression? Have they flourished only by our neglect of them? Has the government done nothing but prey upon them, and eat out their substance? Sir, this fervid eloquence of the British speaker, just, when and where it was uttered, and fit to remain an exercise for the schools, is not a little out of place, when it is brought thence to be applied here to the conduct of our own country towards her own citizens. From America to England, it may be true; from Americans to their own government, it would be strange language. Let us leave it, to be recited and declaimed by our boys against a foreign nation; not introduce it here, to recite and declaim ourselves, against our own.<sup>1</sup>

In a true analogy resemblances must be preponderant. Differences, incompatibilities and unknown points, must be counted against the conclusion. The chief source of fallacy in arguing from analogy is ignoring the number and character of adverse points. Resemblance sufficient for a rhetorical simile is made to answer for an argument. The slight resemblance between the human body and the body politic is the basis of an inference as to the death of republics or the cure of political ills. "I am not quite of the mind of those speculators, who seem assured, that necessarily and by the constitution of things, all States have the same periods of infancy, manhood and decrepitude, that are found in the individuals that compose them. Parallels of this sort rather furnish similitudes to illustrate and adorn, than supply analogies from whence to reason. The objects which are attempted to be forced into an analogy, are not found in the same classes of existence. Individuals are physical beings subject to laws, universal and invariable. The immediate cause

Ignoring  
Adverse  
Points.

<sup>1</sup> *Great Speeches*, 236.



acting in these laws may be obscure ; the general results are subjects of certain calculation. Commonwealths are not physical but moral essences. They are the arbitrary productions of the human mind. There is not in the physical order any distinct cause by which any of those fabrics must necessarily grow, flourish or decay.”<sup>1</sup>

“Sound judgment and vigilant caution are nowhere more called for,” says Whately, “than in observing what differences do, and what do not, multiply the analogy between cases. A seemingly small circumstance will often destroy the analogy, while another difference, important in itself, may not weaken it. Many are misled by not estimating aright the degree and the kind of difference between the cases. It would be admitted that a great and permanent diminution in the quantity of some useful commodity, such as corn, or coal, or iron, throughout the world, would be a serious and lasting loss ; and again, that if the fields and coal-mines yielded regularly double quantities, with the same labor, we should be so much the richer ; hence it might be inferred, that if the quantity of gold and silver in the world were diminished one-half, or were doubled, like results would follow ; the utility of these metals, for the purposes of coin, being very great. Now there are many points of resemblance, and many of difference, between the precious metals on the one hand, and corn, coal, etc., on the other ; but the *important* circumstance to the supposed argument, is, that the *utility* of gold and silver (as coin, which is far the chief) *depends on their value*, which is regulated by their scarcity ; or, rather, to speak strictly, by the difficulty of obtaining them ; whereas, if corn and coal were ten times more abundant (i.e. more easily obtained), a bushel of either would still be as useful as now. But if it were twice as easy to procure gold as it is, a sovereign would be twice as large ; if only half as easy, it would be of the size of a half-sovereign : and this (besides the trifling circumstance of the cheapness or dearness of gold ornaments) would be all the difference.

<sup>1</sup> Burke, *Regicide Peace*, 4.

The analogy, therefore, fails in the point essential to the argument.”<sup>1</sup>

There would certainly be an ignoring of differences between cases, should one argue from the performances once prohibited as improper for the Sabbath, to a closing of public libraries on Sunday:—

“Rest from bodily labor, in the strictest sense, and a day devoted to purely religious exercises, is the ideal Sabbath day of the Jew, the Puritan, and of a large body of Protestant Christians of our time. An investigation of our early State laws shows legislation on the subject very nearly uniform in its purpose, in its prohibitions and penalties. Ordinary work, business, travel, recreation, fishing, hunting, visiting, riding, driving cattle, walking in the fields, were prohibited. In like manner visiting the open public library, this being either for the purpose of work or recreation, should be forbidden.”

Much more logical would be the following:—

“The Sabbath was made for man, not man for the Sabbath. It was made for the good of the whole race, not of the favored few. This involves physical rest and spiritual opportunity, but is not confined to these. It provides for the growth and development of the entire man,—physical, mental, social, æsthetic, moral and spiritual. What the church, the Sabbath school and home reading, are to the favored ones, the public library with its books, its pictures, its companionship, its warmth and light and cleanliness, is to that multitude of men and boys without homes, to whom Sunday is rather a day of temptation than a day of rest.”<sup>2</sup>

“The very common fault (overrating the probative force of analogies), is sometimes supposed to be particularly incident to persons distinguished for their imagination. But in reality it is the characteristic intellectual vice of those whose imaginations are barren, either from want of exercise, natural defect, or the narrowness of their

**Fanciful  
Analogies.**

<sup>1</sup> *Rhetoric*, 118.

<sup>2</sup> See Report of Commissioner of Education, 1892-93, 773.

range of ideas. To such minds objects present themselves clothed in but few properties ; and as, therefore, few analogies between one object and another occur to them, they almost invariably overrate the degree of importance of those few, while one whose fancy takes a wider range, perceives and remembers so many analogies tending to conflicting conclusions, that he is much less likely to lay undue stress on any of them.”<sup>1</sup>

George Eliot shows how, “by changing the metaphor,” the weakness of fanciful analogies becomes apparent : —

“Mr. Stelling concluded that Tom’s brain, being peculiarly impervious to etymology and demonstrations, was peculiarly in need of being ploughed and harrowed by these patent implements : it was his favorite metaphor, that the classics and geometry constituted that culture of the mind which prepared it for the reception of any subsequent crop. I say nothing against Mr. Stelling’s theory : if we are to have one regimen for all minds, his seems to me as good as any other. I only know it turned out as uncomfortably for Tom Tulliver as if he had been plied with cheese in order to remedy a gastric weakness which prevented him from digesting it. It is astonishing what a different result one gets by changing the metaphor ! Once call the brain an intellectual stomach, and one’s ingenious conception of the classics and geometry as ploughs and harrows seems to settle nothing. But then it is open to some one else to follow great authorities, and call the mind a sheet of white paper or a mirror, in which case one’s knowledge of the digestive process becomes quite irrelevant. It was doubtless an ingenious idea to call the camel the ship of the desert, but it would hardly lead one far in training that useful beast. Oh, Aristotle ! if you had had the advantage of being ‘the freshest modern’ instead of the greatest ancient, would you not have mingled your praise of metaphorical speech, as a sign of high intelligence, with a lamentation that intelligence so rarely shows itself in speech without metaphor, — that we can so seldom declare what a thing is, except by saying it is something else ? ”<sup>2</sup>

<sup>1</sup> Mill, *Logic*, 554.

<sup>2</sup> Mill on the *Floss*, Book II., Chap. I.

The argument from sign depends on the association of ideas.<sup>1</sup> One fact or truth is accepted as a reason for believing another. We may argue from effect to cause, from one effect to another effect of the same cause, from effect to condition, from any circumstance that would indicate or suggest another circumstance. In this class of arguments, specially from conventional signs, logical sequence may coincide with chronological, but ordinarily it is the reverse; or the sign and the thing signified may be simultaneous. Circumstantial evidence and testimony have usually been classed as arguments from sign. We argue from sign, when on seeing smoke, we conclude there is fire; when on seeing ice forming, we conclude that the temperature is below 32° Fahrenheit; when on seeing the barometer rapidly sinking, we conclude that there will be a storm; when on seeing a red evening sky, we conclude that there will be fair weather next day; when on seeing a flag hoisted on the court house, we conclude that the court is in session, or seeing the flag at half mast, we conclude that some prominent citizen has died; when on seeing a well-tilled farm, with fences and buildings in good repair, we conclude that the owner is industrious, thrifty and prosperous. We argue from the ringing of a church bell, that there will be a church service; from the signal service flags, that the weather will be fine or stormy, warm or cold; from the regularity of rows of corn, that some one planted it; from the decorations of a town, that there is a public holiday; from one's appearance, that his health is good or bad. In all these cases we infer from sign.

**Argument  
from Sign.  
Definition.**

<sup>1</sup> Page 124.



Rosalind tells Orlando the signs or marks by which a young man is known to be in love : —

“ A lean cheek, which you have not, a blue eye and sunken, which you have not, an unquestionable spirit, which you have not, a beard neglected, which you have not; but  
**Shakespeare.** I pardon you for that, for simply your having in beard is a younger brother’s revenue ; then your hose should be ungartered, your bonnet unbanded, your sleeves unbuttoned, your shoe untied, and everything about you demonstrating a careless desolation ; but you are no such man ; you are rather point-device in your accoutrements, as loving yourself than seeming the lover of any other.”<sup>1</sup>

This accords with Polonius’s inference as to Hamlet’s condition : —

“*Ophelia.* — My lord, as I was sewing in my closet,  
 Lord Hamlet, with his doublet all unbraced ;  
 No hat upon his head ; his stockings fouled ;  
 Ungartered and down-gyved to his ankle ;  
 Pale as his shirt ; his knees knocking each other ;  
 And with a look so piteous in purport  
 As if he had been loosed out of hell  
 To speak of horrors — he comes before me.  
*Polonius.* — Mad for thy love ?”<sup>2</sup>

Huxley argues from sign to show that what is now dry land was once the bottom of the ocean : —

“ We find raised on the flanks of these mountains, elevated  
**Huxley.** by the forces of the upheaval which have given rise to them, masses of Cretaceous rock which formed the bottom of the sea before these mountains existed. It is therefore clear that the elevatory forces which gave rise to the mountains operated subsequently to the Cretaceous period, and that the mountains themselves are made up of the materials deposited in the sea which once occupied their place.”<sup>3</sup>

<sup>1</sup> *As You Like It*, iii. 2.

<sup>2</sup> *Hamlet*, ii. 2.

<sup>3</sup> *American Addresses*, 27.

Junius argues from sign (effect) when he takes the temper and condition of a people as indicating the character of the government: —

“The ruin or prosperity of a state depends so much upon the administration of its government, that, to be acquainted with the merit of a ministry, we need **Junius.** only observe the condition of the people. If we see them obedient to the laws, prosperous in their industry, united at home, and respected abroad, we may reasonably presume that their affairs are conducted by men of experience, abilities, and virtue. If, on the contrary, we see a universal spirit of distrust and dissatisfaction, a rapid decay of trade, dissensions in all parts of the empire, and a total loss of respect in the eyes of foreign powers, we may pronounce, without hesitation, that the government of that country is weak, distracted and corrupt.”<sup>1</sup>

When a question arises as to the authorship of an anonymous book, we usually argue from sign to establish the author's identity. From the circumstances of its publication we have a clue suggested, and form a hypothesis. We then carefully note **Signs of Authorship.** the diction, the structure of the sentences, the character and sources of the illustrations, the special trains of thought which make for or against our hypothesis. “We proceed upon the knowledge that every author has characteristic turns of phrase and imagery and favorite veins of thought, and we look out for such internal evidence of authorship in the work before us. Special knowledge and acumen may enable us to detect the authorship at once from the general resemblance to a known work. But if we would have clear proof, we must show that the resemblance extends to all details

<sup>1</sup> *First Letter.*

of phrase, structure and imagery. We must show that our hypothesis <sup>1</sup> explains all the circumstances; that this is not the work of an imitator, who may reproduce all superficial peculiarities. Few can distinguish, for instance, between Fenton's work and Pope's, in the translation of the *Odyssey*." <sup>2</sup> Authorship, however, can seldom be established by such signs alone: other circumstantial and external evidence must be sought for.

It will be noticed that the fact or phenomenon taken as the sign, is in no sense a cause of the fact, phenomenon or circumstance upon which it helps to form a

conclusion, but only an indication of it, a  
**Sign not** reason for our belief in it. The basis of the  
**a Cause.**

argument from sign is experience. Certain phenomena are suggested by others through the knowledge which we possess connected with them. The sign does not explain *why* the circumstance exists, but indicates that it does exist. "A man is found stabbed to the heart, and with the fresh print of a bloody right hand on his right fore-arm." This print is neither the cause nor the effect of a murder nor of another's presence; but it is a pretty certain sign that the man was murdered, and a positive sign that someone else with a bloody hand was recently present. The ringing of the church bell is a reason for believing that there will be religious service, and the service is the occasion of the ringing of the bell; but no cause is involved.

A south west breeze is not an infallible sign of rain. The maxim, "All signs fail in a dry time," is applicable to other things than the weather. Impostors assume the expression and demeanor of honest men. Red hair

<sup>1</sup> Page 129.

<sup>2</sup> Minto, *Logic*, 339.

is not always indicative of a hot temper nor blue eyes of mildness. The flag may have fallen accidentally to half mast; the church bell may have been rung as a joke; the weather observer may have forgotten to change the signals; and the farm may have been put in order, that sale might be effected.

**Signs Fail.**

In many cases the value of a sign depends on the reasoner's power of interpretation. This is especially true of circumstances used as evidence in criminal law practice. "The shoes of a suspected burglar, foul with the clay that surrounds the entered dwelling, betray his presence at the scene of the crime. The garments of the dead, rent and torn by weapons, reveal the means by which life was destroyed. The wrappings of a lost package, found in the possession of a carrier, point to the means by which it disappeared. . . . In the perception and pursuit of these details lies the supreme excellence of the detective's art, who consciously or unconsciously reducing his investigations to a system based on these attributes of things, feels his way gradually, with unerring skill, from the faint shadows of suspicion to the full light of indisputable truth." <sup>1</sup>

**Interpretation.**

Arguments from sign vary in force according to the conditions of the case.<sup>2</sup> What is strange or beyond ordinary experience, would require stronger evidence to induce belief than what is familiar. We should require better evidence to convince us of the presence of a sea serpent in the Great Salt Lake, diamond beds in Michigan or oyster beds in Kansas, than would convince us of the discovery of new

**Varying Force.**

<sup>1</sup> Robinson, *Forensic Oratory*, 113.

<sup>2</sup> Page 74.



copper mines in Utah or gas-wells in Ohio. Simple testimony would hardly make an Oriental prince believe that water could be made solid, nor a Pawnee chief believe that in parts of the earth shadows fall southward at noon. Arguments from sign—testimony or circumstantial evidence—that would in our minds fully convict of theft or arson a man of low birth, vicious surroundings, depraved moral nature, without work and without money, would have very little force toward making us believe that a young woman of wealth, sound mental and moral culture and pure associations, had committed theft.

“Some inferences, from sign, are necessary, some probable, some merely possible. A man is found stabbed to the heart, with the fresh print of a bloody right hand on his right forearm. The inference is necessary that some other person than himself was present, and that this person had a bloody hand. . . . Under a window which has been burglariously opened, is seen a footprint with a peculiar mark across the toe. The boot of the accused corresponds exactly both with the print and the peculiar mark. The inference of guilt is probable but not inevitable; for other boots may bear the same peculiar mark, or some other person than the prisoner may have been wearing this boot, or the accused may have been in this very spot and still have no connection with the crime. . . . A roll of bills of small denominations and amounting to a certain sum, is stolen from a person in a crowded hall. A roll of bills of similar denominations and amount is found on a reputable person who stood near him in the throng. The inference of guilt is possible, for the bills may be

the same bills and the possessor may be the thief; but it is not even probable; for any other person in the crowd had the same opportunity to steal; and bills of this description are too common to warrant a reasonable belief in their identity, where no actual evidence of their identity is offered.”<sup>1</sup>

The magnitude or importance of the fact from which an inference is made, has little to do with its force as an argument. The force of argument depends on the closeness of connection between facts.

The most trifling circumstance may be of <sup>Importance of Fact as Such.</sup> supreme importance “as a link in a chain of evidence.” Two grains of lead may be of little consequence; but when it is known to be exactly what a bullet loses in passing through a pane of glass, and when, added to the bullet found in the head of a victim shot through a window, it makes that bullet the exact weight of bullets found on the accused and fitting his gun, it becomes highly important as evidence. The markings on a bullet found in the victim’s body, are a small matter; but when they are known to correspond perfectly with the groovings of the prisoner’s pistol, and to lack all correspondence with the pistol of the victim, they assume the highest importance on the question whether the victim met his death by murder or suicide. Microscopical differences in the shading or the slant of letters or differences in the chemical composition of ink, have been the means of detecting forged signatures. So the water-mark of the paper upon which a forged instrument was written, has shown the forgery,—this paper not having been manufactured till after the testator’s death.

<sup>1</sup> Robinson, *Forensic Oratory*, 136.

The most cogent argument from sign is from effect to cause or condition; and if the effect has but a single cause and the condition is necessary, the argument is conclusive. Where there is smoke, there is fire. Where there is frost, there is low temperature. Where there is a chick, there has been an egg. Where there is fusion of metal, there has been heat. Wherever life is generated, a germ has been deposited. If, however, the fact taken as a sign is the effect of any one of several causes, or is dependent upon some one of several conditions, it has little force as an argument to prove any one cause or condition. Illness may be brought on by exposure, overwork, insufficient exercise, unsuitable food and many other causes. Flourishing crops depend, among other things, on moisture and fertile soil; but the moisture may be either from rain or irrigation, and fertility may be either natural or artificial. The value of inference of this kind is measured by the permanence and uniformity of the relation or connection which exists between facts, and which renders one fact to some extent dependent on the other. If the relation is causal, or constant or uniform, the inference is necessary and conclusive; if it is generally present the inference is highly probable. If exceptions are frequent probability decreases. Where exceptions and rule balance there is only a possible inference. Skill in the use of the argument from sign depends on a knowledge of the relation between known facts and what is inferred.

Fallacies in sign argument are usually misinterpretations. Fossil remains and ocean shells on the sides and tops of mountains, have been taken as signs of Satan's

attempt to deceive mankind. The evolutionist takes them as signs of the earlier conformation and life of the earth. In the first case there is no connection at all between known fact and inferred circumstance; the argument rests on a purely arbitrary association of whatever is mysterious with the work of spirits, good or evil. In the second case the argument is based on causal connection. Certain religious sects argue from the frequent rumors of wars and from railway and marine disasters, that the end of the world is approaching. Other classes take these rumors and disasters as signs of greed, injustice and corruption among rulers, on the one hand, and on the other, of undue haste and consequent carelessness in railway and marine engineering, or of incompetent management. A case of illness is taken as a sign of overwork, when it is the effect of over-eating. Hard times among farmers,—low prices for farm products,—are taken by political speakers and writers of a certain order, as a sign that there is not money enough in the country. Others see in these low prices a sign that the markets of the world are being partially supplied from newly developed agricultural regions. Others, see in the same facts signs of over-production. All cannot be entirely right. It will thus be seen that fallacies arise in this class of argument by inferring where there is no connection at all between the known fact and that toward which the arguments is directed, by attributing an effect to a wrong cause, or to a single cause or condition when it is due to several, and by overestimating the closeness or the permanence of the connection.<sup>1</sup>

Fallacies.

<sup>1</sup> Page 118 *et seq.*



The force of an argument from sign may be modified and even entirely destroyed by opposing arguments from antecedent probability. The presence of a man alone near the place where a building had been set on fire and at about the time the crime was committed, would be a sign pointing to him as the probable incendiary. But his previous good character, his known friendship for the owner of the burned building, and his interest in some of its contents, would afford still stronger opposing arguments from antecedent probability. Theft of a heavy package found on the prisoner's premises, may be successfully disproved by showing his physical inability to carry it away. The Jewish doctors in the synagogue could hardly believe the testimony of their own senses when Jesus read and expounded the Hebrew Scriptures; "How knoweth this man letters never having learned?"<sup>1</sup> "That a British nobleman (the Tichborne claimant) well gifted in all respects, and under no known temptation to such proceedings, should ship himself as a common sailor on board a foreign merchant vessel, and pursue by choice a life so hard and toilsome," is a thing so antecedently improbable that it would require the most positive and unequivocal direct evidence to make it credible. A witness may by ties of blood or marriage be connected with the party in whose interests he is called, or who is united with him in some business or religious enterprise, or has shared with him in the profits or the burdens of some political or criminal achievement; or he may in some manner or degree be controlled by this party in property or freedom, or on account of past or prom-

<sup>1</sup> John vii. 15.

ised favors may have incurred obligations to him. Such a witness labors under very strong temptation to uphold and vindicate his associate ; so that an argument from antecedent probability arises against his impartiality and truthfulness as a witness, much stronger than the inferred impartiality and truthfulness from his seeming reluctance or unwillingness to testify.

On the other hand, combinations may be made with arguments from antecedent probability, sign and example or analogy, — an argument being accompanied by one or more of the same class, or of either or both of the other classes, so that each argument is strengthened, and strengthens every other. Those who believe that self-made men are the strongest men, argue from antecedent probability that the exercise of the powers of these men in overcoming difficulties would develop strength, — shrewdness, judgment, wisdom, courage, decision. They argue from sign when they compare the actual achievements of such men with those of an equal number of men whom circumstances have helped. They argue from example when they point out the acknowledged superiority of such men as Franklin, Lincoln and Garfield. They argue from analogy when they cite the hardiness of the tree growing on the rocky and wind-swept flanks of the mountains, and the vigor of the Shetland pony exposed to the rugged northern climate, and obliged to struggle for existence.

Corrobor-  
ation by other  
Classes of  
Arguments.

In the beginning of his speech in defence of the Kennistons, Webster first argues from antecedent probability that such a robbery as was charged against them, could not in the circumstances have taken place in the

manner charged. He further argues from antecedent probability — motive — that Goodrich might have feigned being robbed, and strengthens the former argument

by signs, Goodrich's lack of interest in finding out the perpetrators of the alleged robbery,

and his tardiness and reluctance in prosecuting. He then argues from sign, — absence of any testimony but Goodrich's own improbable and self-contradicting story, — that the robbery is a myth. In Webster's speech on *The Constitution not a Compact*, he first answers Calhoun's propositions by exposition, arguments from sign, arguments from antecedent probability, and the *reductio ad absurdum*. He then enforces the first proposition of his own doctrine by arguments from sign, drawn from the language of the Constitution itself, the utterances of various conventions considering a change from a confederation to a constitutional government, and the history of the formation of the Constitution. The second and succeeding propositions are supported by these same kinds of arguments, although this part of the speech is mostly expository.

The verification of hypotheses,<sup>1</sup> which are practically the products of arguments from example or imperfect induction, usually consists in reinforcing an argument

from antecedent probability by argument

from sign. Take the history of the suction pump.

The ancients said "Nature abhors a vacuum"; Galileo said, "Only to the height of thirty-two feet, where water is concerned." Torricelli, probably familiar with the examples of weighing by balance, said, "The weight of the air balances a column

<sup>1</sup> Pages 113, 129.

of water thirty-two feet in height." He argued further, "If a column of water thirty-two feet high holds the pressure of the atmosphere in equilibrium, a shorter column of a heavier liquid ought to do the same; mercury is thirteen times heavier than water; the atmosphere ought to balance but thirty inches of this." Here is a hypothetical antecedent probability. Closing one end of a three-foot glass-tube, he filled it with mercury and inverted it in a basin of the liquid metal: the mercury in the tube fell, but ceased to sink at a height of thirty inches. Here was a capital sign that his theory was correct. Pascal said (antecedent probability), "If this column of mercury is balanced by the atmosphere, the higher we ascend, the shorter the column ought to be." So he sent a friend up the Puy de Dome with Torricelli's contrivance; during the ascent the column of mercury sank, and during the descent the column rose. Here was another sign.

William H. Seward in his speech *On the Irrepressible Conflict*, combined arguments from antecedent probability and analogy to show that the Democratic party, if not dislodged from power, would perpetuate and extend slavery:—

"The very constitution of the Democratic party commits it to execute all the designs of the slave-holders, whatever they may be. It is not a party of the whole Union, of all the free States and of all the slave States; nor yet is it a party of the free States in the North and in the Northwest; but it is a sectional and local party, having practically its seat within the slave States, and counting its constituency chiefly and almost exclusively there. Of all its representatives in Congress and in the electoral colleges, two thirds uniformly come from these States. Its great element of strength lies in the vote of the



slave-holders, augmented by the representation of three fifths of the slaves. Deprive the Democratic party of this strength and it would be a helpless minority. Being thus local and sectional, it acquires new strength from the admission of every new slave State into the Union. The slave-holders necessarily dictate and prescribe its policy. To expect it to resist slavery and favor freedom is as unreasonable as to look for Protestant missionaries to the Catholic Propaganda of Rome. Its history commits it to the policy of slavery." . . .

"The Democratic party finally has procured from a supreme judiciary fixed in its interest, a decree that slavery exists by force of the Constitution in every Territory of the United States, paramount to all legislative authority either within the Territory or residing in Congress. . . . It has no policy, state or federal, for finance or trade or manufacture or commerce or education or internal improvements, or for the protection or even the security of civil or religious liberty. It is positive and uncompromising in the interests of slavery,—negative, compromising and vacillating, in regard to everything else. . . . It magnifies itself for conquest but it sends the national eagle forth always with chains, and not the olive branch in its fangs." <sup>1</sup>

In his speech *On the Reform Bill*, Macaulay argues by a succession of examples to show the danger of revolution in England unless the reform is soon effected:—

**Succession of Examples.** "It is now time for us to pay a decent, a rational, a manly reverence to our ancestors, not by superstitiously adhering to what they, in other circumstances, did, but by doing what they, in our circumstances, would have done. All history is full of revolutions, produced by causes similar to those which are now operating in England. A portion of the community which had been of no account, expands and becomes strong. It demands a place in the system, suited, not to its former weakness, but to its present power. If this is granted, all is well. If this is refused, then comes the struggle between the young energy of

<sup>1</sup> Bradley, *Orations and Arguments*, 306.

one class and the ancient privileges of another. Such was the struggle between the Plebeians and the Patricians of Rome. Such was the struggle of the Italian allies for admission to the full rights of Roman citizens. Such was the struggle of our North American Colonies against the mother country. Such was the struggle which the Third Estate of France maintained against the aristocracy of birth. Such was the struggle which the Roman Catholics of Ireland maintained against the aristocracy of creed. Such is the struggle which the free people of color in Jamaica are now maintaining against the aristocracy of skin. Such, finally, is the struggle which the middle classes in England are maintaining against an aristocracy of mere locality, against an aristocracy, the principle of which is to invest a hundred drunken potwallopers in one place, or the owner of a ruined hovel in another, with powers which are withheld from cities renowned to the furthest ends of the earth for the marvels of their wealth and of their industry.”<sup>1</sup>

In the following it would seem superfluous to seek greater force by adding other arguments, — antecedent probability, (6) and analogy (8), — to the accumulation of signs indicating the rotundity of the earth: —

**Succession  
of Signs.**

(1) As a vessel sails away from the land, we first lose sight of her hull, next of her lower or main sails, and lastly of her topsails and pennants. (2) The mariner, as he approaches the land, first sees the mountain-tops, and on gradually nearing it, sees the lower grounds stage by stage make their appearance. (3) Being convex or round, each place on the earth's surface, as it turns from west to east, has its sunrise, noon, sunset, and night in succession — one half of the globe being thus always in light while the other is in darkness. (4) To one travelling any considerable distance, either north or south, new stars gradually come into view in the direction to which the traveller is advancing, while others disappear in the direction from which he is receding. (5) Navigators, constantly sailing nearly

<sup>1</sup> *Miscellaneous Works*, v. 23.

due east or due west, have returned to the port from which they set out, making a *circumnavigation* of the globe. (6) Engineers in cutting canals have to make an allowance for a dip of about eight inches a mile in order to keep the water at a uniform level. (7) The shadow which the earth casts on the moon during an eclipse is always circular. (8) The earth belonging to a system, the other members of which are globular, the fair presumption is, that it also is of the same form."

In the above case the inference from each fact or phenomenon taken as a sign, being the effect of a single necessary cause or condition, is rather corroborated than

**Corroborated or Reinforcement.** strengthened by combination with the others. The force of the combination is not more

than the sum of the force of all the single arguments. In many cases, however, it is not so much the accumulation of inferences from sign, as the combination of signs in a peculiar way, that gives cogency to the whole. The force of the arguments in combination is much more than the sum of their force when taken singly. Each circumstance offered in evidence against Vanderpool<sup>1</sup> could be plausibly explained on the theory of his innocence, had this circumstance occurred alone. It was the connection of the circumstances that convinced the first jury of the prisoner's guilt. The same is true of the circumstances upon which the Knapps were convicted of Captain White's murder.

A peculiar inference from an accumulation or a succession of signs is that called the argument from Progressive Tendency. This is the proof of a part of the law of inertia, "A body once set in motion, will continue in motion in a right line, with a uniform velocity,

<sup>1</sup>Page 51.

unless acted on by some force tending to accelerate, retard, stop or divert it." This is incapable of direct proof, since all bodies in motion are subject to more than a single force. But just in proportion as all forces but one are eliminated, the law is verified. A ball rolls farther on a smooth surface than on a rough one: and the smoother the surface, the farther the ball will roll. A pendulum swings longer and a wheel continues longer in motion as the friction at the point of support is removed and the resistance of the air is overcome. This argument has been used to prove the attributes of Deity. Not only do the most enlightened and intellectually cultivated nations agree as to these attributes, but just in proportion as nations advance in enlightenment and culture, so they recognize these attributes. There is, moreover, a progressive tendency to recognize the highest attributes of Divinity, as individuals recede from a savage state and advance in civilization.<sup>1</sup>

**Progressive  
Tendency.**

The basis of all these arguments is experience, either our own or the authenticated experience of another substituted for our own. Whatever may be the ultimate foundations of belief, we always appeal to experience. The more facts from this source we have in our possession, the richer and more apt will be our material for arguments. In accumulating facts from experience we learn also how to draw valid inferences from them. He who would convince others must, of course, have in his possession all the necessary facts pertaining to the case in hand; but almost all kinds of knowledge beyond this special case

**All Argument based  
on Experience.**

<sup>1</sup> See Whately, *Rhetoric*, 106.



can be drawn upon for argument and illustration. It is this outside, general knowledge that is likely to be common to the arguer and those whom he wishes to convince. The facts of this specific matter he may have to communicate.

The sources of knowledge useful to the arguer are almost innumerable. The impressions made upon men's minds by experience and its substitutes,—observation, reading, the testimony of others,—relate to  
**Sources of Knowledge.** nearly everything in the universe. 'Nothing that can be shown, is so mean and trivial or so exalted that it may not suggest ideas by which an argument can be illustrated or emphasized or confirmed. The properties of matter, the phenomena of nature, the character and habits of the animal creation, the examples of history and biography, even the brilliant fantasies of poetry and romance, the crude and solid wisdom of proverbs and maxims, the facts of science, the devices of mechanics, the mysterious processes of the arts,—everything that eye has ever seen, ear heard, or pen or voice has ever communicated, may furnish thought more forcible than even the sworn evidence of witnesses, for conviction and persuasion. One limit only can be placed,—a knowledge of all the matters from which ideas of this class can be drawn, must be as fully possessed by the hearer as by the arguer.'<sup>1</sup>

<sup>1</sup> Abridged from Robinson's *Forensic Oratory*, 92.

## V. SEQUENCE OF ARGUMENTS.

The sequence of arguments<sup>1</sup> is of scarcely less importance than their character. The reasoner collects arguments from every available source. From these he selects such as will be most cogent, taking into account the character of his auditors, their attitude toward his case, and toward himself. These he must arrange so as to give each its fullest effect, and make it render to others its fullest support. The ideas calculated to awaken interest in the arguer and in his case, are supposed to have been presented in the introduction. The ideas which reveal the nature of the proposition and the arguer's claims for it, are understood to have been expressed in the partition,<sup>2</sup> or announced plan. It remains to present in the body of the discourse arguments of such kinds and in such order as will most fully establish the proposition, and justify the arguer's claims.

Importance  
of Good  
Sequence.

The Greek orators laid great stress on the arrangement of arguments: —

“Another of his (Isæus's) strong points was his arrangement of materials, moving his forces with a rapidity and a skill which threw the stress of the assault upon the enemy's weakest points. This is an art which the ancients prized as much in oratory as in war; so much that a disputant used to demand of the judges that his own order be adhered to by the speaker who was to follow, as Æschines did when Demosthenes was about to demolish him. Therefore Isæus varies his disposition of argument according to present need, like a master of arts instead of a servant of rules. Sometimes he drops the introduction altogether and begins with a

Greek  
Orators.

<sup>1</sup> This must not be confused with the grouping of proofs, page 22.

<sup>2</sup> Pages 16, 194.

brief statement of the case with unconventional abruptness. Again he makes the narrative short or long, as he chooses, combining luminous recital with perspicuous reasoning, going step by step through the argument, satisfied with nothing but a systematic and vigorous demonstration, laying close siege to the understanding of the judges. Sometimes he convinces without persuasion, though he seldom persuades without convincing.”<sup>1</sup>

The whole body of arguments must, like a good sentence or paragraph, possess clearness and unity ; and more than any other form or part of composition, it must possess force. Its purpose is to induce belief or change belief, to compel the acceptance of a truth or the abandonment of an error. Arrangement has much to do with securing this force. We have seen that arguments gain, not only by accumulation but by their connection. But the battle is not to the strong alone ; it is to the active, the vigilant, the brave. “Forces that might be easily beaten in detail, will often be irresistible if skillfully drawn up and massed at the point of danger.” The gathering of an army is one thing ; the instruction, discipline and successful management of an army in a hotly contested battle, is quite another. “As the balance of victory has almost always been turned by the superiority of tactics and discipline, so the great effects of eloquence are always produced by the excellency of disposition. There is no part of the science in which the consummate orator will be so decidedly marked out as by the perfection of his disposition.”<sup>2</sup> This military analogy may be carried farther. There is both an independent and an auxiliary use for infantry, cavalry, artillery. There is superior gun metal, superior ammunition,

**Force Gained  
by Arrangement.**

<sup>1</sup> Sears, *History of Oratory*, 56.

<sup>2</sup> John Quincy Adams.

superior execution in the timely discharge as well as in the placing of different kinds of troops. But there are so many circumstances to be taken into account on the battle-field, — the topography, the force, equipment and disposition of the enemy, — that specific plans can be made and executed only when these circumstances are present. This is also true of argument and debate. Only general principles, therefore, can be suggested.

Unless the proposition has already been announced before the body of the discussion proper is entered upon, and unless there are good reasons for withholding the proposition until a still further preparation of the hearer is made for it, the natural order of proceeding is — proposition, direct proof, refutation, other direct proof. If, however, the proposition is trite, something unexpected, or stimulating, may first be offered as proof to avoid the danger of inattention and prejudice. If the announcement of the speaker's opinion on the proposition at the outset, would encounter general opposition, it may be properly delayed until an impartial statement of proofs on both sides seems to give a presumption in his favor; then he may safely commit himself. In these times of well-read but impatient audiences, however, it would be a very obscure speaker who could appear uncommitted before the public on any question of importance. The judge and jury know which side a lawyer is on; congregations know their preacher to be orthodox; the political speaker is such because he is known to be on the right side. The device of withholding one's proposition would seem, then, to be left principally to essayists, independent editors, and occasional speakers.

**Natural  
Order of  
Propositions  
and Proof.**



However well the proposition is stated, however satisfactorily its terms are defined and its meaning explained, the auditor usually needs further help to grasp

and retain the whole discussion. This may  
**Need of Partition.** be furnished by a partition<sup>1</sup> of the subject.

If the subject is unfamiliar or requires close reasoning, if the arguments are numerous or the discussion long, a breaking up of the whole into natural stages, lessens the fatigue of attention and aids the memory. It must be remembered that the plan or outline is primarily for the use of the arguer; the partition is for the benefit of the hearer. The partition may be simply so much of the plan as is announced.

In the speech at the White murder trial, Webster indicates by reference to the questions before the court, in a few words and under a few headings, exactly what he shall attempt to prove.<sup>2</sup>

**Examples.** In the *Reply to Hayne*, after meeting personal and sectional aspersions, he gives his plan of debating the real question, closing with the question itself. In his *Speech on Conciliation*, Burke divides his discussion briefly and pointedly:—

“The capital leading questions on which you must this day decide are these two: First, whether you ought to concede; and secondly, what your concession ought to be.”<sup>3</sup>

In his speech *On Economical Reform*, he begins with an enumeration of the subjects to be argued:—

“MR. SPEAKER: I rise, in acquittal of my engagement to the House, in obedience to the strong and just requisition of my constituents, and, I am persuaded, in conformity to the unani-

<sup>1</sup> Page 16 *et seq.*

<sup>2</sup> Page 291.

<sup>3</sup> Burke, *Select Works*, 168.

mous wishes of the whole nation, to submit to the wisdom of Parliament 'A Plan of Reform in the Constitution of Several Parts of the Public Economy.'

"I have endeavoured that this plan should include, in its execution, a considerable reduction of improper expense; that it should effect a conversion of unprofitable titles into a productive estate; that it should lead to, and indeed almost compel a provident administration of such sums of public money as must remain under discretionary trusts; that it should render the incurring of debts on the civil establishment (which must ultimately affect the national strength and national credit) so very difficult as to become next to impracticable.

"But what, I confess, was uppermost with me, what I bent the whole force of my mind to, was the reduction of that corrupt influence which is itself the perennial spring of all prodigality and of all disorder, — which loads us more than millions of debt, — which takes away vigour from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our Constitution." <sup>1</sup>

Huxley indicates simply, briefly, clearly, and after but two pages of introduction, the line of argument in his *Three Lectures on Evolution*.<sup>2</sup>

"So far as I know, there are only three hypotheses which have ever been entertained, respecting the past story of Nature. I will, in the first place, state **Huxley**. the hypotheses, and then I will consider what evidence bearing upon them is in our possession, and by what light of criticism that evidence is to be interpreted."

The partition of his lecture on *The Study of Biology*,<sup>3</sup> in the same volume, is still briefer: —

"I shall therefore address myself to the endeavor to give you some answer to these four questions, — what Biology is; why it should be studied; how it should be studied; and when it should be studied."

<sup>1</sup> *Works*, II. 55.

<sup>2</sup> *American Addresses*, 4.

<sup>3</sup> *Ibid*, 131.

At the close of his first lecture on evolution, which is merely a preparation for his arguments in favor of the evolution theory, he makes a partition of the subject of the next two lectures:—

“I shall place before you three kinds of evidence entirely based upon what is known of the forms of animal life which are contained in the stratified rocks. I shall endeavor to show you that there is one kind of evidence which is neutral, which neither helps evolution nor is inconsistent with it. I shall then bring forward a second kind of evidence which indicates a strong probability in favor of evolution, but does not prove it. I shall adduce a third kind of evidence which being as complete as any kind of evidence which we can hope to obtain on such a subject, and being wholly and strikingly in favor of evolution, may be fairly called demonstrative evidence of its occurrence.”<sup>1</sup>

It will be seen that this is not merely a partition of the proposition, but a dividing of the discussion into such natural divisions that the listener may more easily

follow the line of argument, and be aided in remembering it. Divisions by partition

should be natural, on the same basis, not too numerous, properly coördinated, arranged in logical order, stated succinctly and clearly, and then be carefully followed in the discussion. “Divisions thus formed and stated promote perspicuity of discussion. They aid the speaker in gaining this. Clear mental action works instinctively by plan, and each assists the other. You understand a subject better by having reduced it to a plan of discourse. A natural division of a subject for use is no more nor less than a philosophical analysis and arrangement of its materials. Your own thoughts are

<sup>1</sup> *American Addresses*, 29.

the more lucid for the discipline. Divisions also assist the hearer to clearness in understanding a discussion. Why should not a hearer, in this respect, profit by a statement of a plan, as well as a preacher by the existence of a plan? The fact that he is a hearer, that he must depend on the momentary perceptions of the ear, that he has no chance for review, for delay, for growth of thought, renders him specially dependent upon the facilities which logic suggests for an understanding of oral discourse. The whole argument for the statement of a proposition bears with nearly equal force upon the necessity of *stating* divisions also.”<sup>1</sup>

Exposition often paves the way for argument by making clear the meaning of what is to be proved, whether in the chief proposition, the subordinate propositions used as proofs, or the terms in which statements are made. Sometimes, too, it is made to do the work of argumentation. A clear exposition of the meaning of a statement often renders proof of its truth unnecessary. In many passages in the *Reply to Hayne* and in *The Constitution not a Compact*, Webster so forcibly expounds principles and results, identities and distinctions, that the reader is compelled to draw his own conclusions and thus accept exposition for argument.

In rare instances, positive, incisive statement has the force of argument, but like exposition, very seldom throughout extended discourse. In his characterization of Samuel Dexter, Webster attributes this remarkable power to that gentleman: “His very statement was argument; his in-

Exposition  
in Argu-  
mentation.

Statement  
Equivalent  
to Argument.

<sup>1</sup> Phelps, *Lectures on Preaching*, 365.



ference was demonstration. The earnestness of his own conviction wrought conviction in others. One was convinced, and believed and assented, because it was gratifying, delightful, to think, and feel, and believe, in unison with an intellect of such evident superiority.”<sup>1</sup>

He gives an illustration of his own power in this respect, when, in characterizing Jeremiah Mason, he thus enforces the proposition, “Religion is an element of greatness”:—

“Political eminence and professional fame fade away and die with all things earthly. Nothing of character is really permanent but virtue and personal worth. These remain. Whatever of excellence is wrought into the soul itself belongs to both worlds. Real goodness does not attach itself merely to this life ; it points to another world. Political or professional eminence cannot last forever ; but a conscience void of offence before God and man is an inheritance for eternity. *Religion*, therefore, is a necessary and indispensable element in any great human character. There is no living without it. Religion is the tie that connects man with his Creator, and holds him to His throne. If that tie be all sundered, all broken, he floats away, a worthless atom in the Universe ; its proper attractions all gone, its destiny thwarted, and its whole future nothing but darkness, desolation and death. A man with no sense of religious duty is he whom the Scriptures describe, in such terse but terrific language, as living ‘without God in the world.’ Such a man is out of his proper being, out of the circle of all his duties, out of the circle of all his happiness, and away, far, far away, from the purpose of his creation.”<sup>2</sup>

The force and relevancy of the arguments selected to establish a proposition, are of more importance than their number. A few pertinent and decisive arguments are better than a host stopping just short of conclu-

<sup>1</sup> *Great Speeches*, 262.

<sup>2</sup> *Ibid*, 595.

siveness. Were all minds convinced by the same kind of reasoning, frequently a single indisputable argument, and usually a few, if not balanced by arguments equally indisputable, would suffice. But as different minds are not convinced by the same arguments, and as a decision is usually the balancing of probabilities, numerous and diverse arguments are necessary. Weak arguments, however, should be rejected. They excite suspicion and lessen the force of valid arguments with which they are connected. Weak and strong are relative terms, however, depending on what is to be proved and what mind is to be convinced.

Number and  
Force of  
Arguments.

“That which in one class of subjects would be of great force, would be feeble in another class. Extrinsic proof is usually regarded as of inferior value. In theoretical subjects it holds, if admitted at all, a subordinate place; but when the question is one of fact, it is more decisive than any other. In theological discussions the appeal is to the teachings of Scripture; in legal proceedings, to the decisions of the courts; in both authority is of supreme importance. When the question is as to a future event, the *a priori* argument is the most decisive: analogy and example are also employed. These kinds of proof are therefore the most important in senatorial eloquence, which is occupied chiefly with questions of expediency. When the aim is to establish the presence of a certain cause, the *a posteriori* argument is most effective; when the probability of a past event is to be shown, testimony is preferred, and after it, the other arguments *a posteriori*. These, ac-

On Different  
Subjects.

cordingly, are the most important forms of proof in judicial oratory.”<sup>1</sup>

What may be complete proof to those acquainted with the subject, might have no effect on an ignorant mind. Not only degree of intelligence but ability to give attention must be considered. Candid minds open  
**To Different** to conviction, and fair minds ready to weigh  
**Minds.** whatever seems worthy of consideration, may be influenced by what would not touch the prejudiced, the bigoted or the captious. What is true of the kind of arguments, as related to different persons, is to a certain extent true also of the order of presentation. Only the most general principles can be suggested. The details must be left to the speaker, who is supposed to know his audience and his occasion.

Some propositions, then, and some occasions, demand one class of arguments, and some another; but usually two or all three classes are used. It has been seen that  
**Antecedent** in scientific investigation a certain order of  
**Probability,** procedure is maintained.<sup>2</sup> This order is gen-  
**Example,** erally adopted for literary argument also.  
**Sign.** That order has been found most effective which begins with arguments from antecedent probability, follows these with arguments from example, and follows examples with arguments from sign. From certain established principles, — causes or motives with their known influences and tendencies, — a hypothesis is formed as to what is likely to be. Instances, essentially like the case in hand, are cited to show the more or less certain operation of these causes. Particular signs are adduced to show that what is supposed to occur, what has oc-

<sup>1</sup> Hepburn, *Manual of Rhetoric*, 197.

<sup>2</sup> Page 129.

curred in the similar cases, does actually occur in the present case.

The reasons for this order are obvious. We may say that the arguments from antecedent probability are explanatory of the whole case and of the principle involved; and so they are the natural preparation for the other arguments. If they were to come last they might be thought not so much arguments as explanations of what had been supposed proved by the other arguments, examples and signs; but if a listener deemed a fact not proved, he would care little for explanation. If examples were placed first the hearer might not see their pertinence not knowing the principle under which they were introduced. "Coming first, arguments from antecedent probability raise a presumption in favor of the proposition to be proved. This presumption is strengthened by arguments from example, which furnish evidence concerning similar occurrences, and by those from sign, which furnish evidence tending to show that what was likely to occur did occur. Arguments from antecedent probability, since they suggest a cause or causes, point to the principle which is applicable to the case in hand; those from example furnish instances of its application in other cases; those from sign tend to prove that it applies in the present case."<sup>1</sup>

This order seems the most natural. The scientist uses it.<sup>2</sup> The jurist uses it. He first puts forward a theory of the case, depending on a general principle; then he cites other cases, examples of the application of this principle; then he produces special signs of

Reasons for  
this Order.

<sup>1</sup> A. S. Hill, *Principles of Rhetoric*, 383.

<sup>2</sup> Pages 113, 129.



the fact in this case. The medical writer and the practitioner use it. It is the method in deliberative oratory. It may be the method of an entire discourse, or of

**This Order Generally Adopted.** those parts of a discourse which sustain any single subordinate proposition. In the

*Speech on Conciliation*, Burke first gives the the causes which would keep the Americans from submission, and the advantages, which, if turned to English account, should be motives for conciliation on the part of the English,—growing population, prosperity, i. e. tendency towards independence, agriculture, trade, fisheries, and American love of liberty. Then after showing by various combinations of arguments that conciliation is the only practical, if not the only possible way of dealing successfully with the Colonies, he adduces the examples of Ireland, Wales, Durham and Chester. He often follows this order in a single paragraph. “The Americans,” he argues, “will not submit; for among other things they are devoted to the principles of personal liberty; we should expect this, for love of liberty is a fundamental element of their religion, the dissidence of dissent, the protestantism of the Protestant religion, this religion, under a variety of denominations, agreeing in nothing but in the communion of the spirit of liberty.”

“Sir, I can perceive by their manner that some gentlemen object to the latitude of this description, because in the Southern Colonies the Church of England forms a large body, and has a regular establishment. It is certainly true. There is, however, a circumstance attending these Colonies which, in my opinion, fully counterbalances this difference, and makes the spirit of liberty still more high and haughty than in those to the northward. It is that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case

in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, that freedom, as in countries where it is a common blessing and as broad and general as the air, may be united with much abject toil, with great misery, with all the exterior of servitude ; liberty looks, amongst them, like something that is more noble and liberal. I do not mean, Sir, to commend the superior morality of this sentiment, which has at least as much pride as virtue in it ; but I cannot alter the nature of man. The fact is so ; and these people of the Southern Colonies are much more strongly, and with an higher and more stubborn spirit, attached to liberty than those to the northward. Such were all the ancient commonwealths ; such were our Gothic ancestors ; such in our days were the Poles ; and such will be all masters of slaves, who are not slaves themselves. In such a people the haughtiness of domination combines with the spirit of freedom, fortifies it and renders it invincible.”<sup>1</sup>

In his speech at the White murder trial, Webster first shows by signs, — circumstantial evidence, — that there was a conspiracy for the murder. He then shows Knapp’s *motive* for entering this conspiracy, and adduces arguments from sign, — testimony and circumstantial evidence, — that Knapp *was* connected with the conspiracy ; then he argues by examples, — cited cases, — and signs, — testimony and circumstances, — proving certain facts, that Knapp was so connected as to make him principal. Like Burke, Webster sometimes uses this order of argument in establishing a single point.

Huxley’s main proposition, “That the present condition of the earth is the result of evolution,” scientifically viewed, does not admit of *a priori* considerations. It is a matter of historic fact to be established or over-

<sup>1</sup> *Select Works*, I. 181.

<sup>2</sup> Pages 295, 296, 305, 306, 309.

thrown by the evidence of circumstances. But in establishing these circumstances and in meeting objections, he uses arguments of all three classes. From various examples, he forms his hypothesis. Taking this provisionally as his argument from antecedent probability, he proceeds to verify by examples and signs, what the hypothesis is used to account for.

Neither a single sign nor a single example is, as a rule, a sufficient basis for a forceful argument. The sign may be misunderstood, misinterpreted or fabricated ;

**One Sign or Example Insufficient.** or if genuine, and the argument based upon it valid, it may appeal to but part of those to be convinced. A single instance may be an exception instead of an example ; or if an example, it may impress many but slightly, and a few not at all.

When it is possible it is desirable to arrange the material of argumentative discourse, as in other kinds of discourse, in climax order. . There are, however,

**Climax Order. When Possible.** many difficulties in the way. This arrangement might interfere with the support that arguments would otherwise give each other.

It might not be the most obvious order ; and an audience suspects of sophistry or artifice, a speaker who presents arguments in a way which seems to them unnatural. It would seem to involve beginning with a weak argument, and so incurring the danger of prejudice from the start. The first argument must be strong and obvious, to secure interest and a favorable hearing for what is to follow. The last argument must also be one of breadth, weight and cogency, to deepen and fix the final impression. The arrangement in order of climax, then, may begin after the first argument ; and

arguments of less force may be so arranged throughout the discourse as to buttress other stronger arguments, instead of being given undue prominence themselves. Arguments intrinsically weak may gain strength by position. Both Webster and Burke are specially skillful in arranging the material of the separate parts of their speeches in climax order, and in emphasizing what has been so far presented, by concise recapitulation.<sup>1</sup>

The advantages of frequent recapitulation in long oral addresses, are obvious. Even the most skillful speaker fails sometimes to hold the continuous attention of the entire audience. Those who give constant attention may be unable to retain un-aided all the points presented even in a single stage of the discourse. Summaries stimulate attention and recall and emphasize salient points. The recapitulation of the reasons for the spirit of liberty in the Colonies, which has already been quoted,<sup>2</sup> is a good example of Burke's method. Others will be found at the end of other parts of the speech. Huxley regularly recapitulates at the end of a lecture the substance of what has been presented, or gives it at the beginning of the next lecture, as an introduction. The following from the *Letters of Junius* is a capital rapid summary of a preceding discussion : —

Frequent  
Recapitulation.

“This, Sir, is the detail. In one view, behold a nation overwhelmed with debt ; her revenues wasted ; her trade declining ; the affections of her colonies alienated ; the duty of the magistrate transferred to the soldiery ; a gallant army, which never fought unwillingly but against their fellow subjects, mouldering away for want of the direction of a man of com-

<sup>1</sup> Pages 304, 306, 311, 327, 336, 338, 339.

<sup>2</sup> Page 89.



mon abilities and spirit ; and, in the last instance, the administration of justice become odious and suspected to the whole body of the people. This deplorable scene admits but of one addition—that we are governed by councils, from which a reasonable man can expect no remedy but poison, no relief but death.”<sup>1</sup>

When a speaker must either precede or follow an opponent, this fact may modify the arrangement of his arguments. In the first case he may find it desirable to anticipate and answer objections ; in the second, he will most likely have to meet and answer opposing arguments. He who attacks an established theory or a popular belief, finds himself under the same obligation. This meeting of objections and answering of arguments, is called refutation. It will be seen that the process is purely destructive.

The champion of a new or unpopular theory,<sup>2</sup> in order to get a hearing at all, must often put forward at the beginning, arguments of unusual force. Some of the fundamental ideas supporting the old theory must be attacked, to shake the faith of the audience in it and weaken their attachment to it.

Nor can he approach to any purpose with tack-hammer and nippers ; he must come with sledge-hammer and tongs. He must destroy as soon and as effectively as possible. He must, moreover, attack those ideas which in their fall will take most with them. Thus Huxley's first lecture in the series of three lectures on evolution, is a refutation of the “Eternity” hypothesis and the “Miltonic” hypothesis. He could hope to make but little headway with the arguments for evolution so

<sup>1</sup> First Letter.

<sup>2</sup> Page 34.

long as a large part of his audience had no reason for distrusting the soundness of the "Miltonic" theory. Special objections he meets and refutes as they may be suggested by his own arguments, or as they may naturally arise in the minds of his audience.

Webster begins his speech at the White murder trial by refuting the charge of his being brought to hurry the jury against the law and beyond the evidence. He gives the details of the crime, and then refutes the idea that there was extraordinary effort made to discover and punish the guilty.

**Refuting an Opponent.**

Throughout the speech, along with direct proof, refutation comes as it seems necessary and where it seems most natural. The first half of Webster's *The Constitution not a Compact*, is an elaborate refutation of the widely accepted nullification doctrine. In Burke's *Speech Previous to the Bristol Election* and in the *Speech on Conciliation*, refutation comes in at the close as supplementary and completes the argument. It is merely an answer to objections which are not of great significance.

The place of refutation then, seems, in general, to depend on the nature and force of what is to be refuted, and on the attitude of those addressed to this and to the speaker. Unless an opposing argument really blocks the way of constructive arguments, it is rarely judicious to begin a speech by refutation. This makes the opposing arguments too prominent. The beginning and the end of a discourse are the emphatic places, and should be occupied by the strongest constructive arguments. Yet not infrequently the first speaker in the debate spends the entire time

**Place of Refutation.**

allotted him, in imagining and answering what his "worthy opponent will tell you," when he should be putting forward strong direct arguments of his own. He thus aids his opponent in several ways. If his predictions are correct, he gets his opponent's arguments so much the earlier before the audience, and his refutations will not always convince every hearer. If his predictions are false he leaves the audience to infer his unfairness and his lack of positive arguments, and his opponent has the field,

Nor will it for other reasons be wise, as a rule, to delay all refutation till the close. If obvious objections are not answered as soon as it is thought they should be, some will believe this is because they cannot be answered at all; or it may seem that constructive arguments have failed to make out a case, and refutation comes in at last only to make the other side a little more doubtful; or it may recall such of the opponent's arguments as the speaker would like to have forgotten.

It would seem best, then, first to make out an apparent case by constructive arguments. If necessary it may be conceded that against the speaker's position

there are strong arguments which will be  
**Summary.** noticed later. It will not answer to neglect these altogether unless the cogency of constructive arguments renders any refutation unnecessary; for, again, it will be said that they are unanswered because they are unanswerable. When the speaker has the attention, the good will, the sympathy and the confidence of the audience, when he seems to them to have made out a *prima facie* case, then he may safely leave his side for a time and discuss what seems to make against him;

or he may answer objections where they seem most closely connected with his own arguments. To forget to take up a point that has been thus waived, however, is dishonest and frequently disastrous. To give opposing arguments too much attention is to emphasize them unnecessarily; to ignore them entirely is to incur the suspicion of inability to answer them.

“One principle of modern parliamentary debate is the assumption that all antagonism springs from honest difference of opinion, and therefore can be removed by argument. This assumption is not necessarily true. Interest, prejudice, passion, hatred, Fairness to  
Opponent. envy and malice, are often at the root of differences even with regard to points of constitutional law; and many an opinion is not founded on conviction, but is used as a mere weapon of attack. Nevertheless, it is the boast at once of the most civilized and the most successful forensic art to treat an adversary's opinions as error and not as produced by original sin. The best practical test of what are allowable epithets or imputations in debate is to ask, ‘Should we consider this fair debate if applied to ourselves?’—a test which is at once good morals and good sense.”<sup>1</sup>

Fairness in meeting objections, honesty in stating them, and boldness and skill in answering them, or candor in acknowledging their force, are all in the interest of the debater whose aim is either truth or victory. It is to be remembered, however, that “truth is better than victory,” and victory at the expense of truth, or victory without truth, is not worth the contest.

“In nothing is the prodigious power of Fox as a debater

<sup>1</sup> *The Nation.*



more strikingly shown than in the fact that after having stated his adversary's argument with tenfold more force than his adversary himself had put it, so that his friends were alarmed lest he should fail to answer it, he proceeded to rend it in pieces, thus making the contrast between it and its destruction all the more vivid." Mr. Lincoln was noted for giving away small points. "We may be wrong on that, your honor," he would say; or, "I think we were wrong there, but it is not the gist of the matter anyway." This fair play and liberality always told with a jury when he finally said, "Now, this much we may ask, and when I shall state it, it will be a reasonable demand." Then with the husk all trimmed off, he would state in a candid way such a reasonable request that the justice of his demand stood alone and relieved of everything but a fair, just judgment.

All the methods of indirect<sup>1</sup> argument may be successfully used in refutation. A contradictory proposition may be put forward and sustained by any of the modes of direct reasoning. The truth of the proposition assailed, whether premise or conclusion, may be disproved by direct evidence, or the evidence upon which it rests may be shown to be false or insufficient. The reasoning leading to a conclusion may be shown to be fallacious. It may be proved that assigned motives and causes are inoperative, that signs are inadequate, that examples are exceptions, and that analogies lack resemblance in vital points.<sup>2</sup> Epigram, retort, repartee, ridicule, irony, epithet, have a use as well as an abuse in refutation.

"We must not close our review without calling attention to our author's happy way of compressing an argument into an epigram; as when he speaks of George's argument 'that collective property in land is perfectly practicable because so many races have tried it and given it up.' Another instance

<sup>1</sup> Page 78.<sup>2</sup> Pages 122, 155, 167, 181.

is to be found when the statement, 'It is not the wealth that the capitalist consumes which really goes to the laborers, but the wealth that he does not consume,' is substituted for that ancient stumbling-block, 'A demand for commodities is not a demand for labor.'"<sup>1</sup>

Neither Webster nor Burke hesitated to cast suspicion on an adversary's conclusions by ridiculing the source of his argument, or his methods, or his pretensions. Webster's speech at Niblo's, and the passages on the Coalition, and carrying war into the enemy's country, in the *Reply to Hayne*, afford good examples. Burke's speech before the Bristol election offers good illustrations of his power of satire, irony, and ridicule, used with the force of refutation.

The following is a good example of candid and dignified refutation from an editorial pen; and it illustrates several valid methods in meeting and overcoming opposing arguments:—

"Last of all, we wish to say a few words about high schools. The high school is perhaps the most characteristic product of American ideals of education, and is so firmly intrenched in the good-will and sympathy of the vast majority of taxpayers that it may safely be counted upon to hold its own. Yet there is no doubt that in our larger cities a certain numerically small but active element of antagonism to the high school as an institution, makes itself felt upon critical occasions, and succeeds in weakening the influence and efficiency of high-school work.

"The arguments directed against the high school may be reduced to three. (1) Its work is ornamental and therefore superfluous. (2) Only a small percentage of the school population receives its benefits, while all are taxed for its support. (3) It is mainly an institution for the wealthy classes, who alone send their children to it.

<sup>1</sup> *The Nation*.

“To the first of these arguments we may reply that the question involved is one of degree and not of kind. No one not invincible in his own ignorance, can safely divide school work into two sorts, the useful and the ornamental; nor can anyone intelligently assert that the leaven of good citizenship, the chief object of all public schools, is less successfully cultivated in the high school than in the school of lower grade. The only question suitable for the public to consider is that of the number of years for which it is proposed to support a school system; and the answer will depend upon the economic condition of the community concerned. If the majority decides for a twelve-year course, those who would have preferred eight years, or six, or ten, cannot fairly claim that any question of principle is involved in their disagreement.

“The second argument, that, high schools being for the few, the many should not be taxed for their support, may be disposed of in a similar way. Here again we have merely a question of degree. If a public-school system covered only two years of study, there would be fewer children in the second year than in the first. Whatever the length of the course, there will be fewer students in each year than in the year preceding. Or, taking the argument of ‘the few and the many,’ as it is sometimes put, it would be just as fair to select any one school, high or low, in a city system, and say; ‘This school only accommodates five per cent of the children of the community, yet all the community is taxed for its support. Behold the monstrous injustice!’ Such is the logic with which the friends of public education sometimes have to contend.

“As for the final argument of the enemies of the high school, it more often than not rests upon a falsehood. We do not know how it is in all other cities, but we assert that in Chicago, at least (and the assertion is based upon a quarter-century of intimate acquaintance with the facts), the high schools are not institutions for the wealthy and well-to-do classes. It might very reasonably be argued that if they were, there would be no inherent injustice in the arrangement, since the wealthy classes pay taxes in a proportion greatly exceeding

the number of their children ; but there is no necessity for resorting to this plea.

“The truth of the matter is that in Chicago parents of all classes very generally send their children to the public schools of primary and grammar grade, but that when these children reach the high school grade a considerable fraction of them are taken out of the public schools and sent to private institutions. Hence, as far as any class distinction of patronage exists at all, it operates in the direction of restricting the benefits of the high schools to the poorer classes, of making them, in the phrase of a popular rhetoric, the ‘poor man’s colleges.’ Moreover, the high schools of a compact and well-organized system like that of Chicago are in a very real sense the most important part of the whole. They not only perform the usual function of higher schools in holding up the lower schools to a fair standard of efficiency, in acting as the keystone of the whole educational arch ; but they also perform the far more important service of training for their work nearly all the teachers of the lower grades. The expanding educational system of Chicago requires every year some three or four hundred new teachers, and the great majority of them are selected from the graduates of the high schools. With this fact in view, it is simply amazing that anyone should seriously think the high-school system of the city either unimportant or ornamental, that anyone having the interests of education at heart should not realize that a weakening of the high-school work would be the most serious disaster possible, making its unfortunate consequences felt, not merely at the time when it occurred, but for long years to come.”<sup>1</sup>

Refutation is more difficult than constructive reasoning. It must often be done without time for preparation. It involves a thorough knowledge of the case from the adversary’s point of view. Difficulty in Refutation. It involves a careful and critical analysis of his arguments with their bearings, as he sees them.

<sup>1</sup> *The Dial*, March, 1896.



It involves an estimate of all the evidence in the case from his side, an estimate of his notion of the character of those to be convinced, and a forecast of the effect which he expects to be produced upon them by the evidence. The refuter must be quick to detect what is irrefutable, and shrewd enough to let it alone or balance it with what is irrefutable on his side. He must be ready with telling arguments to meet what is refutable, be dexterous in applying them, and know just when to stop.

#### VI. PERSUASION.

In matters involving abstract truths, in mathematics, pure science, and in mere matters of historic fact, the work of argumentation is complete when proofs have been so presented as to induce the desired belief in those addressed. Such truths have little or nothing to do with human conduct. They are addressed to the intellect and their effect is only intellectual. In discussing matters involving the direction of human conduct, it is not usually sufficient to convince the understanding. Men accept a truth, and ignore it in their actions, or they act inconsistently with it, or even in defiance of it. To direct the conduct of those addressed, the writer or speaker must so appeal to their emotions, so arouse feeling, as to induce a willingness to carry conviction into action. This is called Persuasion, and in arguments upon human affairs is almost invariably combined with conviction. Huxley aims only to overthrow error and establish truth. After the somewhat persuasive introduction, his discourse is, therefore, addressed to the intellect of his audience.

**Definition  
and Illustrations.**

Both Webster and Burke aim to secure action, — one the verdict of a jury, the other the decision of parliament; they therefore combine persuasion with argument, and appeal to the humanity, sympathy, sense of duty, sense of justice and self interest of those addressed. Brutus's speech<sup>1</sup> is a cold, dry, intellectual address to the *reason* of his hearers, and chills them into a continuance of their inactivity. Antony's speech<sup>2</sup> is argumentative at the beginning, but becomes more and more purely persuasive, and appeals to national pride, pity and sympathy for Cæsar and hatred for his murderers, as well as cupidity and revenge; and it inflames the mob to violence for which they can give no better excuse than "His name is Cinna." With such arguments as satisfy the understanding, an ideal argumentative discourse would combine such appeal to the emotions as must result in action in accordance with the belief induced. But the ideal is rarely realized.

Persuasion is an accompaniment and supplement to conviction, but cannot honestly be substituted for it. Appeal to feeling is an essential process of complete argumentation; but it must follow evidence, not replace it. The logical order of address is first to the understanding, then to the emotions, and through these to volition terminating in action. We first know, then feel, then will, then act. "Emotion is conditioned on apprehension, volition on emotion, action on volition." The business of persuasive discourse is to arouse to action. Just as exposition presupposes a degree of ignorance, and argumentation assumes that there is disbelief or error; so persuasion

**Relation of  
Persuasion  
and Convic-  
tion.**

<sup>1</sup> Page 342.

<sup>2</sup> Page 345.

takes for granted indifference, inaction, or action in a wrong direction. It must not be forgotten, however, that persuasion may be used to misdirect action, unless as the basis of action there is a well-grounded belief.

Fact should precede and awaken feeling. No feeling has any warrant either in speaker or auditor, except the fact which arouses it. "The more the empty head glows and burns, the more hollow and thin and dry it grows."<sup>1</sup> Webster's appeals, whether for his whole case or for any part of it, follow substantial reasons. He both announces and illustrates this principle in a paragraph often quoted:—

**Fact and  
Feeling.**

"Sir, the great interest of this country, the producing cause of all its prosperity, is labour! labour! labour! We are a labouring community. A vast majority of us all live by industry and actual occupation in some of their forms. The Constitution was made to protect this industry, to give it both encouragement and security; but, above all, security. To that very end, and with that precise object in view, power was given to Congress over the currency, and over the money system of the country. In forty years' experience, we have found nothing at all adequate to the beneficial execution of this trust but a well-conducted national bank. That has been tried, returned to, tried again, and always found successful. If it be not the proper thing for us, let it be soberly argued against; let something better be proposed; let the country examine the matter coolly, and decide for itself. But whoever shall attempt to carry a question of this kind by clamor and violence and prejudice; whoever would rouse the people by appeals, false and fraudulent appeals, to their love of independence, to resist the establishment of a useful institution, because it is a bank, and deals in money, and who artfully urges these appeals wherever he thinks there is more of honest feeling than of enlightened judgment,—means nothing but deception. And whoever has

<sup>1</sup> Phillips Brooks, *Lectures on Preaching*, 5.

the wickedness to conceive, and the hardihood to avow, a purpose to break down what has been found, in forty years' experience, essential to the protection of all interests, by arraying one class against another, and by acting on such a principle as *that the poor always hate the rich*, shows himself the reckless enemy of all. An enemy to his whole country, to all classes, and to every man in it, he deserves to be marked especially as *the poor man's curse !*"<sup>1</sup>

Burke is persuasive rather than argumentative when he points out the influence which the spirit of the British Constitution must exert upon the Colonies : —

“My hold of the Colonies is in the close affection which grows from common names, from kindred blood, from **Burke's** similar privileges, and equal protection. These **Persuasive-**are ties which, though light as air, are as strong as **ness.** links of iron. Let the Colonists always keep the idea of their civil rights associated with your government,—they will cling and grapple to you, and no force under heaven will be of power to tear them from their allegiance. But let it be once understood that your government may be one thing, and their privileges another, that these two things may exist without any mutual relation, the cement is gone—the cohesion is loosened—and everything hastens to decay and dissolution. As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and sons of England worship freedom, they will turn their faces towards you. The more they multiply, the more friends you will have; the more ardently they love liberty, the more perfect will be their obedience. Slavery they can have anywhere—it is a weed that grows in every soil. They may have it from Spain; they may have it from Prussia. But, until you become lost to all feeling of your true interest and your natural dignity, freedom they can have from none but you. This is the commodity

<sup>1</sup> *Great Speeches*, 361. Compare with campaign speech, page 104.



of price of which you have the monopoly. This is the true Act of Navigation which binds to you the commerce of the Colonies, and through them secures to you the wealth of the world. Deny them this participation of freedom, and you break that sole bond which originally made, and must still preserve, the unity of the Empire. Do not entertain so weak an imagination as that your registers and your bonds, your affidavits and your sufferances, your cockets and your clearances, are what form the great securities of your commerce. Do not dream that your letters of office, and your instructions, and your suspending clauses, are the things that hold together the great contexture of the mysterious whole. These things do not make your government. Dead instruments, passive tools as they are, it is the spirit of the English communion that gives all their life and efficacy to them. It is the spirit of the English Constitution which, infused through the mighty mass, pervades, feeds, unites, invigorates, vivifies every part of the Empire, even down to the minutest member.”<sup>1</sup>

Here reasons are stated, but they are stated in such a way as to appeal to the heart as well as the head, to arouse sympathy and generosity as well as self-love and patriotism; they are so presented as to stimulate generous impulse rather than compel assent.

The personality of the speaker, his complete identification with his cause, his perfect alliance with those addressed in a common cause, his recognized leadership sometimes warrant his making a direct personal appeal. “His merited rank, his superior eloquence, his splendid qualities, his eminent services, the vast space he fills in the eye of mankind,” justify an exhortation to a certain state of mind and consequent course of action. This is illus-

**Personal  
Appeal.**

<sup>1</sup> *Select Works*, I. 231.

trated in Webster's *Address at the Laying of the Corner Stone of the Addition to the Capitol*.<sup>1</sup>

Persuasion may aim at individual action or at joint action. The lawyer must often direct his efforts to a single jurymen. Choate is said to have talked for hours to the hard-headed foreman of a jury.

The preacher, the legislator or the political orator, may aim to secure either "the action of man as man, acting under his individual responsibilities, or those joint measures by which communities determine and regulate their conduct." But persuasive efforts are not confined to the jury box, the pew, the legislative hall; the whole sphere of duty, interest, privilege, conduct, justice, is open to its work. It is employed by the statesman and diplomat to secure the perpetuation of national institutions; it is used by the book-agent and lightning-rod peddler in disposing of their wares; its power is exercised to win a bride or to carry an election.

**Field of  
Persuasion.**

Persuasion was formerly confined entirely, as it is now for the most part, to oral address. It presupposes an auditor or an audience. The orator has before him those whom he is to persuade. He feels their pulse, reads their faces, endures their hisses or is inspired by their applause. While he is preparing his speech in advance, all this must be present to him; and even he who would persuade through the editorial column or the magazine article, must in imagination have before him the class addressed, and seem to look them in the eye, command their attention, work on their feelings, and use the expedients of one actually before them. The relation of writing to spoken argument or

**Persuasion  
Supposes an  
Audience.**

<sup>1</sup> *Great Speeches*, 646.

persuasive discourse, is thus expressed by Mr. Choate:—  
 “I am not to forget that I am, and must be, if I would live, a student of forensic rhetoric. A wide and anxious survey of that art and that science, teaches me that careful, constant writing is the parent of ripe speech. It has no other. But that writing must always be rhetorical writing, that is, such as might in some parts of some speech be uttered to a listening audience. *It is to be composed as in and for the presence of an audience.*”

Many influences tend to prevent those who are convinced, from acting upon their convictions. Young people, convinced that their interests demand devotion to study, still “fleet the time carelessly”; or, convinced that both duty and personal advantage favor membership in a church, yet through dislike of restraint they form no church connection. A horror of the death penalty deters a juryman from joining in a verdict of “guilty,” though he is certain the prisoner has committed the capital crime. People know that health depends upon exercise, temperance in diet, and regularity in habits; but they stagnate in libraries and offices, indulge in excesses, and live no two days alike. So those to whom arguments are addressed and who accept the truths proposed, for various reasons fail to act on those truths. The claims of a benevolent enterprise are so presented as to convince nine tenths of the audience; and yet eight tenths fail to contribute. Conviction reaches the intellect but not the purse. Argument compels assent but not a contribution; it convinces of the truth of religion, but does not impel men “to go sell all they have and give to the poor.” The charity that begins at home possesses the

**Necessity of  
Persuasion.**

deepest interest ; and until this feeling is overcome, until a vital interest is engendered in the subject presented, cold logic is vain. The speaker's work is incomplete until "he has so presented his subject that it takes entire possession of the mind, and operates upon it with such energy as to arouse emotions which control the will."

Beecher's logic would never have gained him a hearing at Liverpool. It was Webster's supreme power of persuasion that gave him the decision in the celebrated Dartmouth College Case. Franklin was not easily made to change his opinion ; but White-<sup>Illustrations.</sup>field's marvelous persuasive power unsettled even that hard-headed philosopher's firm conviction and wrung from him his last coin. This is Franklin's story:—

"The sight of their miserable situation inspired the benevolent heart of Mr. Whitefield with the idea of building an Orphan House there, [in Georgia] in which they might be supported and educated. Returning northward, he preached up this charity and made large collections, for his eloquence had a wonderful power over the hearts and purses of his hearers, of which I myself was an instance.

"I did not disapprove of the design, but as Georgia was then destitute of materials and workmen and it was proposed to send them from Philadelphia at a great expense, I thought it would have been better to have built the house here and brought the children to it. This I advised ; but he was resolute in his first project, rejected my counsel and I therefore refused to contribute. I happened soon after to attend one of his sermons, in the course of which I perceived he intended to finish with a collection, and I silently resolved he should get nothing from me. I had in my pocket a handful of copper money, three or four silver dollars, and five pistoles in gold. As he proceeded I began to soften and concluded to give the coppers. Another stroke of his oratory made me ashamed of that and determined me to give the silver ; and he finished so admirably that I



emptied my pocket wholly into the collector's dish, gold and all." <sup>1</sup>

In this case persuasion did not take the place of argument, but supplemented it, completed it, and enabled the speaker to achieve what with argument alone he could not compass. Franklin did not act contrary to reason nor without reason, but against the conclusions of his former reasonings, which under the power of Whitefield's persuasive argument were overcome.

The hearer, having a clear idea of the aim and nature of the proposed action, is to be impelled towards its performance. He must be shown its necessary connection

**Active Principles Reached.** with his own interest or happiness or duty. His personal desire must be aroused, and he must be made to feel that this action

will satisfy that desire. Sympathies must be touched, fears excited, ambitions stirred, hopes awakened, hatred kindled, any noble passion fired and directed, that will find relief in the desired action. It must always be remembered, however, that serious action must not be the result of persuasion alone; if action involves important interests, labor or self-sacrifice, it must have a foundation in solid conviction. He who appeals to passions when he should be arguing, explaining and illustrating, "either lacks knowledge or has no serious belief in what he proposes." <sup>2</sup>

When it is said that argument should precede appeal, that conviction should lead up to persuasion, it is not meant that all the body of argument should be presented before any appeal is made or any persuasion is used. The work of

**Place of Persuasion.**

<sup>1</sup> Franklin's *Autobiography*, 137.

<sup>2</sup> Pages 104, 217.

persuasion may be partly done in the introduction,<sup>1</sup> securing a favorable reception of the speaker or of his theme ; or it may pervade the whole body of his discourse, determining what arguments shall be presented, and in what order and by what method they shall be presented. It may follow and complete the work of individual arguments or groups of arguments. It may follow the whole body of argument,<sup>2</sup> energizing and carrying home the conclusion.

The exordium must frequently be more than a mere introduction ;<sup>3</sup> it must "*reddere auditores benevolos, attentos, dociles.*"<sup>4</sup> It must be winning, conciliatory, stimulating ; it must allay fears, invite confidence.

Webster's introductions are often persuasive. Persuasion  
in the Exor-  
dium.

The introduction to his argument at the White murder trial is a model.<sup>5</sup> Burke is more conciliatory than usual in the introduction to his *Speech on Conciliation*. He usually lacks Webster's tact in the opening passages of his speeches. "Edmund Burke would have been pronounced by the cautious and painstaking orators of the ancient world, a fool for his recklessness of all expedients of conciliation in the introductions of many of his parliamentary addresses. He aggravated hostility by defying it. He often produced it by inviting it. He gave occasion for it by assuming its existence and answering it in kind. On one occasion he said, 'Mr. Speaker, I rise under some embarrassment occasioned by a feeling of delicacy towards one half of the house, and of sovereign contempt for the other half.' Cicero would have pronounced him a savage."<sup>6</sup> When

<sup>1</sup> Pages 6-10.

<sup>2</sup> Pages 253, 263, 267.

<sup>3</sup> Page 6.

<sup>4</sup> Cicero.

<sup>5</sup> See pages 9, 282, *et seq.*

<sup>6</sup> Phelps, *Lectures on Preaching*, 225.

from the technicality of his subject, a speaker feels that his discussion may seem dry and dull, he may partly anticipate and overcome any lack of interest on the part of the audience, by a persuasive introduction. Huxley does this in the beginning of his *Three Lectures on Evolution* : —

“ We live and form part of a system of things of immense diversity and perplexity, which we call nature ; and it is a matter of the deepest interest to all that we should form just conceptions of the constitution of that system and of its past history. With relation to this universe, man is, in extent, little more than a mathematical point ; in duration but a fleeting shadow ; he is a mere reed shaken in the winds of force. But, as Pascal long ago remarked, although a mere reed, he is a thinking reed ; and in virtue of that wonderful capacity of thought, he has the power of framing for himself a symbolic conception of the universe, which, although doubtless highly imperfect and inadequate as a picture of the great whole, is yet sufficient to serve him as a chart for the guidance of his practical affairs. It has taken long ages of toilsome and often fruitless labor to enable man to look steadily at the shifting scenes of the phantasmagoria of Nature, to notice what is fixed among her fluctuations, and what is regular among her apparent irregularities ; and it is only comparatively lately, within the last few centuries, that the conception of a universal order and of a definite course of things, which we term the course of Nature, has emerged.

“ But, once originated, the conception of the constancy of the order of Nature has become the dominant idea of modern thought. To any person who is familiar with the facts upon which that conception is based, and is competent to estimate their significance, it has ceased to be conceivable that chance should have any place in the universe, or that events should depend upon any but the natural sequence of cause and effect. We have come to look upon the present as the child of the past and as the parent of the future ; and, as we have excluded

chance from a place in the universe, so we ignore, even as a possibility, the notion of any interference with the order of Nature. Whatever may be men's speculative doctrines, it is quite certain that every intelligent person guides his life and risks his fortune upon the belief that the order of Nature is constant, and that the chain of natural causation is never broken.

"In fact, no belief which we entertain has so complete a logical basis as that to which I have just referred. It tacitly underlies every process of reasoning; it is the foundation of every act of the will. It is based upon the broadest induction, and it is verified by the most constant, regular, and universal of deductive processes. But we must recollect that any human belief, however broad its basis, however defensible it may seem, is, after all, only a probable belief, and that our widest and safest generalizations are simply statements of the highest degree of probability. Though we are quite clear about the constancy of the order of Nature, at the present time, and in the present state of things, it by no means necessarily follows that we are justified in expanding this generalization into the infinite past, and in denying, absolutely, that there may have been a time when Nature did not follow a fixed order, when the relations of cause and effect were not definite, and when extra-natural agencies interfered with the general course of Nature. Cautious men will allow that a universe so different from that which we know may have existed; just as a very candid thinker may admit that a world in which two and two do not make four, and in which two straight lines do enclose a space, may exist. But the same caution which forces the admission of such possibilities demands a great deal of evidence before it recognizes them to be anything more substantial. And when it is asserted that, so many thousand years ago, events occurred in a manner utterly foreign to and inconsistent with the existing laws of Nature, men who, without being particularly cautious, are simply honest thinkers, unwilling to deceive themselves or delude others, ask for trustworthy evidence of the fact.

"Did things so happen, or did they not? This is an histori-



cal question, and one the answer to which must be sought in the same way as the solution of any other historical problem.”<sup>1</sup>

If a speaker is unknown, or known unfavorably; if he represents a client, a party, an idea or a cause, against which there is prejudice; if for any reason he may expect an unfriendly reception; if his fitness to represent his cause is questioned, — he will need to exercise his power of persuasion to secure an impartial hearing for his arguments.<sup>2</sup> The extent to which narration, description, exposition and persuasion may enter into an introduction, depends upon things known only to the speaker. . He is expected to know himself, his subject, and his occasion; and knowing these, he must adapt his introduction to the bringing of the three into the proper relation.

Persuasion may be diffused throughout the body of the discourse. The character of evidence presented, or the method in which it is presented, or some peculiar circumstance connected with it, may afford opportunity for appeal in behalf of the cause, the speaker or some vital principle involved in the discussion. The skillful arguer seldom fails to give to evidence, reference, illustration, and allusion, a turn personal to his audience. In this way he seeks to connect what he is presenting, with their individual character, interests, duties or pleasure, and thus touch their hearts while addressing their reason.

As Webster is developing his arguments or immediately upon closing an argument, he often finds something suggested to stir the emotions of jury or audience. “Did you, gentlemen, sleep quite as quietly in your beds after

**Overcoming  
Hostility.**

**Persuasion  
Throughout  
the Dis-  
course.**

<sup>1</sup> *American Addresses*, 1-4.

<sup>2</sup> Pages 6-8.

this murder as before?"<sup>1</sup> "We hope it (your decision) will be a precedent both of candor and intelligence, of fairness and of firmness, of good sense and honest purpose, pursuing their investigation discreetly."<sup>2</sup>

"Admit that this is extraordinary; still this Illustrations.  
does not prove it untrue. It is extraordinary that you twelve gentlemen, out of all the men in the country, should be called upon to decide this case; no one could have foretold this three weeks since."<sup>3</sup> "I come now to the testimony of the father. Unfortunate old man! Another Lear in the conduct of his children. Another Lear, I apprehend, in the effect of his distress upon his mind and understanding."<sup>4</sup> "It is a point on which each one of you might reason like a Hale or a Mansfield."<sup>5</sup> "I would gladly find an apology for that witness in his agonized feelings; in his distressed situation; in the agitation of that hour and of this; . . . but even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however, reluctantly, which that demands from us."<sup>6</sup> Webster's congressional addresses and especially those on the Constitution, as well as his political speeches, abound in persuasive passages and strong appeals following the arguments out of which they grow. In the speech on *The Appointing and Removing Power*, a speech spoken of as "entirely intellectual, passionless and impersonal," after arguing the evils from the growth of this power, he appeals to congressmen as witnesses of its evil effects:—

"I would ask every member of the Senate if he does not perceive daily, effects which may be traced fairly to this cause. Does he not see a union of purpose, a devotion to power, a co-

<sup>1</sup> Page 285. <sup>2</sup> Page 289. <sup>3</sup> Page 299. <sup>4</sup> Page 317. <sup>5</sup> Page 321. <sup>6</sup> Page 332.

operation in action, among all who hold office, quite unknown in the earlier periods of the government? Does he not behold every hour, a stronger development of the principle of personal attachment and a corresponding diminution of genuine and generous public feeling? Was indiscriminate support of party measures, was unwavering fealty, was regular suit and service, ever before esteemed such essential and important parts of official duty?"<sup>1</sup>

In Burke's *Speech on Conciliation* the six arguments for the spirit of liberty,<sup>2</sup> as well as the paragraph introducing them and preceding the arguments against *force*,<sup>3</sup> are persuasive as well as convincing. The paragraph leading to a discussion of his specific policy closes with persuasion:—

"The question with me is, not whether you have a right to render your people miserable, but whether it is not your interest to make them happy. It is not what a lawyer tells me I *may* do, but what humanity, reason, and justice tell me I *ought* to do. Is a politic act the worse for being a generous one? Is no concession proper but that which is made from your want of right to keep what you grant? Or does it lessen the grace or dignity of relaxing in the exercise of an odious claim because you have your evidence-room full of titles, and your magazines stuffed with arms to enforce them? What signify all those titles, and all those arms? Of what avail are they, when the reason of the thing tells me that the assertion of my title is the loss of my suit, and that I could do nothing but wound myself by the use of my own weapons?"<sup>4</sup>

He uses persuasive argument when meeting objections to his resolutions:—

"‘Remove the cause of this complaint and other complaints will rise,’ they say.

"I do not know that the Colonies have, in any general way, or in any cool hour, gone much beyond the demand of humanity

<sup>1</sup> *Great Speeches*, 396.

<sup>2</sup> *Select Works*, I. 176.

<sup>3</sup> Page 25.

<sup>4</sup> *Select Works*, I. 196.

in relation to taxes. It is not fair to judge of the temper or disposition of any man, or any set of men, when they are composed and at rest, from their conduct or their expressions in a state of disturbance and irritation. It is besides a very great mistake to imagine that mankind follow up practically any speculative principle, either of government or of freedom, as far as it will go in argument and logical illation. We Englishmen stop very short of the principles upon which we support any given part of our Constitution, or even the whole of it together. I could easily, if I had not already tired you, give you very striking and convincing instances of it. This is nothing but what is natural and proper. All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter. We balance inconveniences ; we give and take ; we remit some rights that we may enjoy others ; and we choose rather to be happy citizens than subtle disputants. As we must give away some natural liberty to enjoy civil advantages, so we must sacrifice some civil liberties for the advantages to be derived from the communion and fellowship of a great empire. But, in all fair dealings, the thing bought must bear some proportion to the purchase paid. No one will barter away the immediate jewel of his soul. Though a great house is apt to make slaves haughty, yet it is purchasing a part of the artificial importance of a great empire too dear to pay for it all essential rights and all the intrinsic dignity of human nature. None of us who would not risk his life rather than fall under a government purely arbitrary. But although there are some amongst us who think our Constitution wants many improvements to make it a complete system of liberty, perhaps none who are of that opinion would think it right to aim at such improvement by disturbing his country, and risking everything that is dear to him. In every arduous enterprise we consider what we are to lose, as well as what we are to gain ; and the more and better stake of liberty every people possess, the less they will hazard in a vain attempt to make it more. These are the cords of man.”<sup>1</sup>

<sup>1</sup> *Select Works*, I. 221.



The work of persuasion may begin with the first sentence uttered, as in some of Cicero's orations; or a speech may be so planned that throughout, argument and appeal go side by side or are so fused that they cannot be separated. This is the case in some of Patrick Henry's speeches and in Beecher's Liverpool address. Persuasion may also be left for the most part, or wholly, to the peroration. After the facts have been presented, and the whole case in all its bearings has been spread out before those addressed, an impassioned appeal is made to stir the emotions or excite the passions, in order to secure the desired action.

The conclusion of Judge Curtis's speech in the case of Dr. Helmhold, whose sanity was the point at issue, involves restatement, characterization and appeal: —

“The proof is ended and the story is told, and I commit the destiny of Dr. Helmhold to his judges. God in His providence has permitted him to view the terrible calamities by which, more than other men, he has been tried.

“He rises in this dark hour superior to the machinations of those who have endeavored to destroy him. He invokes the administration of justice and the protection of the law. In his marvelous career how vividly do we see depicted the uncertainty of earthly prosperity and grandeur.

“Of obscure origin, by his industry, energy and capacity he founded a business that extorted revenue from all the nations of the earth, that brought him a golden harvest, as the reward of a commercial enterprise so broad, liberal and comprehensive that while it had its origin in the great republic, it lost not sight of the remoter realms of China, and the people dwelling on the banks of the Ganges. His foes have stripped him of his estate, have alienated from him the wife of his bosom and the children of his loins; they have confined him in those earthly hells — the asylums for the insane — and with merciless

cruelty, more conspicuously wicked than the conduct of the unnatural children of King Lear, they have sought to deprive him of his reason, and send a madman's soul shrieking to the bar of God. They have concentrated upon his unhappy existence all the calamities that can affect the human species.

"Rescue him, gentlemen, from the peril of despair; and when you and he appear before the infallible judge, you will have the supreme consolation of knowing that because you turned not a deaf ear to the voice of mercy and justice, you are not forgotten by One who never errs."<sup>1</sup>

The peroration of Burke's opening speech at the trial of Hastings, and the much more impassioned peroration of the closing speech,<sup>2</sup> are of this kind. The first is given here:—

"In the name of the Commons of England, I charge all this villainy upon Warren Hastings, in this last moment of my application to you.

"My Lords, what is it that we want here to a great act of national justice? Do we want a cause, my Lords? You have the cause of oppressed princes, of undone women of the first rank, of desolated provinces, and of wasted kingdoms.

"Do you want a criminal, my Lords? When was there so much iniquity ever laid to the charge of any one? No, my Lords, you must not look to punish any other such delinquent from India. Warren Hastings has not left substance enough in India to nourish such another delinquent.

"My Lords, is it a prosecutor you want? You have before you the Commons of Great Britain as prosecutors: and I believe, my Lords, that the Sun, in his beneficent progress round the world, does not behold a more glorious sight than that of men, separated from a remote people by the material bounds and barriers of Nature, united by the bond of a social and moral community; all the Commons of England resenting, as their own, the indignities and cruelties that are offered to all the people of India.

<sup>1</sup> *Modern Jury Trials*, 688.

<sup>2</sup> Page 267.

“Do we want a tribunal? My Lords, no example of antiquity, nothing in the modern world, nothing in the range of human imagination, can supply us with a tribunal like this. My Lords, here we see virtually, in the mind’s eye, that sacred majesty of the Crown, under whose authority you sit, and whose power you exercise. We see in that invisible authority, what we all feel in reality and life, the beneficent powers and protecting justice of his Majesty. We have here the heir-apparent to the crown, such as the fond wishes of the people of England wish an heir-apparent of the crown to be. We have here all the branches of the royal family, in a situation between majesty and subjection, between the sovereign and the subject, — offering a pledge in that situation for the support of the rights of the Crown and the liberties of the people, both which extremities they touch. My Lords, we have the great hereditary peerage here, — those who have their own honour, the honour of their ancestors, and of their posterity, to guard, and who will justify, as they have always justified, that provision in the Constitution by which justice is made an hereditary office. My Lords, we have here a new nobility, who have risen and exalted themselves by various merits, — by great military services which have extended the fame of this country from the rising to the setting Sun. We have those who, by various civil merits and various civil talents, have been exalted to a situation which they well deserve, and in which they will justify the favour of their sovereign, and the good opinion of their fellow-subjects, and make them rejoice to see those virtuous characters that were the other day upon a level with them now exalted above them in rank, but feeling with them in sympathy what they felt in common with them before. We have persons exalted from the practice of the law, from the place in which they administered high though subordinate justice, to a seat here, to enlighten with their knowledge, and to strengthen with their votes those principles which have distinguished the courts in which they have presided.

“My Lords, you have here, also, the lights of our religion, — you have the Bishops of England. My Lords, you have that true image of the primitive Church, in its ancient form, in its

ancient ordinances purified from the superstitions and the vices which a long succession of ages will bring upon the best institutions. You have the representatives of that religion which says that their God is love, that the very vital spirit of their institution is charity; a religion which so much hates oppression, that, when the God whom we adore appeared in human form, He did not appear in a form of greatness and majesty, but in sympathy with the lowest of the people, and thereby made it a firm and ruling principle that their welfare was the object of all government, since the Person who was the Master of Nature chose to appear Himself in a subordinate situation. These are the considerations which influence them, which animate them, and will animate them, against all oppression; knowing that He who is called first among them, and first among us all, both of the flock that is fed and of those who feed it, made Himself 'the servant of all.'

"My Lords, these are the securities which we have in all the constituent parts of the body of this House. We know them, we reckon, we rest upon them, and commit safely the interests of India and of humanity into your hands. Therefore it is with confidence, that, ordered by the Commons,

"I impeach Warren Hastings, Esquire, of high crimes and misdemeanors.

"I impeach him in the name of the Commons of Great Britain in Parliament assembled, whose parliamentary trust he has betrayed.

"I impeach him in the name of all the Commons of Great Britain, whose national character he has dishonored.

"I impeach him in the name of the people of India, whose laws, rights and liberties he has subverted, whose properties he has destroyed, whose country he has laid waste and desolate.

"I impeach him in the name and by virtue of those eternal laws of justice which he has violated.

"I impeach him in the name of human nature itself, which he has cruelly outraged, injured and oppressed, in both sexes, in every age, rank, situation, and condition of life."<sup>1</sup>

<sup>1</sup> Select Works, x. 142.



If persuasion is separated from argument, its usual and natural place is after the presentation of facts. Intellectual action precedes emotional activity. Men must be first instructed, then they may be convinced, and then properly roused to action. But knowing *when* men may be persuaded, is not knowing *how* to persuade them. The methods must be almost infinite to meet all possible cases. The action aimed at may vary from a single instance of self-restraint, to a course of conduct involving labor, self-sacrifice, and even life itself. Action may be desired of a single person, or of all whose conduct affects the destinies of a great nation. Motives differ. An appeal that would excite one class to fury, might leave another class indifferent. The intelligence, occupations, interests, beliefs, connections, environments, and moral character of those addressed, all have a determining effect on persuasive method. Written discourse requires a modification of the method of spoken discourse. "To be persuasive . . . it is necessary to have vividly present to the view all the leading impulses and convictions of the persons addressed, and to be ready to catch at every point of identity between these and the propositions or projects presented for their adoption. The first-named qualification grows out of experience and the study of character; the other is the natural force of similarity, which has often been exemplified in its highest range in oratorical minds."<sup>1</sup>

The most common means of persuasion consists in placing before an audience some motive for action, that is, "something that will occasion or induce free action

<sup>1</sup> Bain, *The Senses and the Intellect*, 543.

in man." At the White murder trial Webster urged upon the jury the protection of innocent people and the satisfaction gained from duty well done. In the *Speech on Conciliation* Burke tried to make parliament see that concession would, in the end, secure a better revenue from the Colonies than insisting upon the right of taxation. Huxley offers as an inducement to follow his reasoning, the satisfaction of "possessing a true solution of the great problems of nature." In his speech at Liverpool Beecher showed the English that their attitude towards this country would injure the market for their own goods. In his speeches on the Constitution Webster offered as incentives, liberty, equality, and prosperity, under a free government. In his campaign speeches Mr. Bryan attempted to show how "free silver" would enable the oppressed classes to "get even" with money owners and money changers, give the debtor the option in the payment of debts, and relieve all the distresses of hard times. In all these cases it is shown to be a duty, or to be in some way to the interest of those addressed, to do a certain thing,—convict a criminal, vote for a measure, change a national attitude, preserve the union, work for "free silver."

In every case the speaker must know to what emotion he may successfully appeal, or what motive he may present. These motives are so numerous and diverse that to understand them is no easy matter. Attempts have been made to classify them; as, those connected with personal interest,—self-preservation, culture, enjoyment, ambition; those connected with social duty,—benevolence, philanthropy,

**Motives of  
Action.**

**Classes of  
Motives.**

heroism, patriotism; those connected with moral or religious duty,—toleration, kindness, service, submission, love, reverence, praise, worship. But this does not exhaust the list of even worthy motives, and omits such baser motives as selfishness, hate, anger, revenge, sensual desires, vanity, and greed. To know whether to present considerations of happiness, or duty, or generosity; whether to arouse emotion, then guide it to action; whether to complete the work of persuasion at once or return to it later; to know how successfully to present any considerations,—implies a careful study of human nature under the most varied circumstances. It implies such a thorough knowledge of men and of expedients as is obtained only by long experience in dealing with practical affairs. To prescribe specific rules for persuasion, therefore, is impossible; the most that can be done is to suggest a few general principles which good sense, insight, sympathy, and a grasp of the situation, will apply to any case.

Other things being equal, it is best to offer the highest motive which will be effective. Men are induced to contribute to a charity by various appeals,—to the brotherhood of man, to sympathy for those benefited, to a hope of reward, to mere vanity — a desire of being paraded in public as a benefactor. If motives of different rank are put forward the higher should come after the lower, unless the speaker, relying upon the higher, sees that to have failed. Webster first shows at the White murder trial that the conviction of the criminal will secure safety to innocent people, the jury included. His closing appeal is of a higher mood,—fidelity to a trust, duty to man

**Appeal to  
Highest  
Motive.**

and to God. Burke appeals in the *Speech on Conciliation*, to British cupidity, to admiration for colonial enterprise, to fear of losing the Colonies, to a sense of justice, and last to national interest, combined with national duty toward a great part of the colonial population.

There is no surer mark of distinction between the statesman and the demagogue than the motives offered in public addresses. Hardly a greater contrast can be imagined than that between the appeals of Webster on questions of national finance<sup>1</sup> and those of some popular political speakers of this generation: —

**Statesmen  
and Demagogues.**

“We are the greatest nation on earth. I am a candidate for the greatest office on earth. You are the people of the greatest nation on earth. Your President is merely your hired man. Your wisdom is inexhaustible and infallible. You alone are capable of deciding all questions, economic, moral, and other, in the best manner. They say that you cannot solve the financial question without the aid of the rest of the world. I tell you that you are so great that you can ignore the rest of the world. The issue is drawn. Shall we have an American financial system for the American people, or an English financial system for the English aristocracy and American goldbugs?”<sup>2</sup>

An appeal to motives so low or selfish as to seem unworthy, usually thwarts itself. “Virtue assigns the law of successful persuasion. The orator who avails himself of the ignorance and passions of men incurs the risk, that, in wiser and calmer moments, the fact may be discerned, and prove henceforth the occasion of distrust and separation. The grounds of influence are confidence and sympathy. Without these, the

**Low Appeal.**

<sup>1</sup> Page 104, 216.

<sup>2</sup> *The Nation*.



mind holds itself aloof, and the emotions sought for are not aroused. Nothing more excites men of ordinary intelligence to resistance, to close all the avenues of the heart, than the discovery that they have been deceived and designedly misled.”<sup>1</sup>

A motive is more likely to be effective if it is in accord with the habitual state of mind of the audience. It is of little use to appeal to a spendthrift's love of money, or a scoffer's reverence. A prohibition agitator would find difficulties in Germany. An appeal to patriotism will reach many in any country and under any form of government; but an appeal to a sacred reverence for the authority of monarchs would be more successful elsewhere than in America.

The use of a single motive to stir a mixed audience or even to move an individual, is rarely successful. Men have different interests. They look upon enterprises from a different point of view. They see different consequences from the same act or course of conduct. From their modes of thought and the subjects with which they are familiar, they must be approached in a different way.

“Persuasion implies that some course of conduct shall be so described, or expressed, as to coincide, or be identified, with the active impulses of the individuals addressed, and thereby command their adoption of it by the force of their own natural dispositions. A leader of banditti has to deal with a class of persons whose ruling impulse is plunder; and it becomes his business to show that any scheme of his proposing will lead to this end. A people with an intense, overpowering patriotism, as the old Romans, can be acted on by proving that the

<sup>1</sup> Bascom, *Philosophy of Rhetoric*, 57.

interests of country are at stake. The fertile oratorical mind is one that can identify a case in hand with a great number of the strongest beliefs of an audience ; and more especially with those that seem, at first sight, to have no connection with the point to be carried. The discovery of identity in diversity is never more called for, than in the attempts to move men to adopt some unwonted course of proceeding.”<sup>1</sup>

The appeal through the presentation of motive is more or less direct. The feelings may, however, be reached in another way, and then made an impelling force in the desired direction. When Antony addressed the mob, he did not even suggest that it would be to their interest to “Revenge, — about, — seek, — burn, — kill, — slay, — let not a traitor live !” He inflamed their passions, which must find vent in some way ; and his knowledge of human nature was such that he foresaw their action. Napoleon’s, “Forty centuries look down upon you from these pyramids,” with the few stirring words that followed, was more effective than a long array of motives for doing a soldier’s duty. The preacher by various devices — picturing death-bed scenes, the torments of the damned, the joys of the redeemed, — arouses the emotions of his congregation, working upon his hearers so strongly that they must find relief in action ; then he places the desired course of action vividly before them, and they find relief in its adoption. The lawyer works in the same way upon the jury. He pictures the horrors of the crime, the suffering it inflicts, the outrage upon humanity. He shows how the crime touches the jury as citizens, as protectors of their wives and little ones ; and then as Webster so often does, he leaves them to “do their duty.” Some-

Directing  
Aroused  
Feeling.

<sup>1</sup> Bain, *The Senses and the Intellect*, 452.

times he *urges* them to do their duty and punish the murderer as in the following speech of General Breckinridge in the Buford case:—

“O gentlemen, give us one more crowning proof that the trial by jury is not a farce and show, but that justice can be enforced by a Kentucky jury according to the law and evidence, and with a full sense of the solemn value of that duty to be performed.

“This is not my voice, but that of my brother, who pleads with you by the side of this dead judge and this living prisoner. I have no right to do more than pray that God will give you strength to do your duty, your whole duty, so that in His sight you can stand upright. And if the verdict which your consciences require, deprives him of his life, he will owe to you what he refused before his blameless visitation, to make peace with that God who will judge each of us for the just verdict in this trial.”<sup>1</sup>

The indirect method is often preferable to this more direct. Men are suspicious of direct appeals, and often arm themselves against them. To arouse and influence feeling with no seeming intent to do so, avoids that prejudice. No man can feel joy or grief, love or hate, merely by being told to do so or by wishing to do so. Even the actor must work upon himself, take himself to the source of feeling, and arouse feeling in himself, before he is able successfully to represent it to his audience. The speaker having always present the cause of feeling, may exhibit its effect upon himself, that is, he may exhibit his own feelings to the audience; or he may present to them in detail what arouses the feeling in himself.

To excite feeling by the exhibition of feeling, the ora-

<sup>1</sup> *Modern Jury Trials*, 683.

tor must have the confidence of the audience; and this depends on what he is. In matters involving serious action, earnest men and thoughtful audiences will tolerate no acting. Nothing but the sterling qualities of manhood will give a speaker success in moving his audience through his own personality.

Value of  
Character.

Fervor must be sincere, sentiment genuine, eloquence spontaneous. "Virtue ought to accumulate strength, vice to lose it. Benevolence ought to win favor and selfishness to forfeit it; integrity ought to secure confidence, and trickery, to destroy it. The momentum and power of personal character are a most wholesome law in the world."<sup>1</sup>

Alliance with those addressed is absolutely necessary, so to move them as to stir their activities. A thinking audience rejects alliance with a hypocrite. Artifice, tricks of argument, flattery, attempts to entrap either judgment or will, are a sure bar to those friendly relations so necessary to persuasion.

Alliance  
With Those  
Addressed.

The audience want a *man*, not a rhetorical or emotional gymnast. Between them and the speaker there must be mutual respect and trust. "He must lead them to the summit of truth and duty. He must unite himself entirely with them, make their thought his thought, their impulses his impulses, even their prejudices his prejudices, that he may graft his thought on theirs, mould their impulses into his, and efface their prejudices with his truth."<sup>2</sup> If his character is such as to gain full confidence, he may do this; if not, he may instruct or convince, but never persuade.

Beecher judged his audience by their appearance, and they judged him in the same way. So any public speaker is likely to be judged. His demeanor before his audience

<sup>1</sup> Bascom, *Philosophy of Rhetoric*, 97.    <sup>2</sup> Robinson, *Forensic Oratory*, 27.



should command respect. "In all kinds of public speaking, but especially in popular assemblies, it is a capital rule to attend to all the decorum of time, place, and character. No warmth of eloquence can atone for the neglect of this. That vehemence which is becoming in a person of character and authority, may be unsuitable to the modesty expected from a young speaker. That sportive and witty manner which may suit one assembly, is altogether out of place in a grave cause and solemn meeting. No one should ever rise to speak in public without forming to himself a just and strict idea of what suits his own age and character; what suits the subject, the hearers, the place, the occasion; and adjusting the whole train and manner of his speaking to this idea."<sup>1</sup>

To have influence, the speaker must be known as a man of ability. An audience soon learns whether a man is master of his subject or is only feeling his way; and knows, too, when the blind lead the blind, where both are liable to fall. He must be known as a man of industry as well as of sound judgment. A lazy man does not seek after truth; a man of little judgment does not know when he has found it. The speaker must be known as honest, sincere, fair and frank; for if he is not he may be thought to withhold the truth or pervert it, to "make the worse appear the better reason." Evident common sense and a modest friendly manner in a speaker will do much toward making an audience trust his revelation of himself or the management of his material.

If a speaker "expresses his own feeling and trusts to

<sup>1</sup> Quintilian, *Institutes*, Book XII.

the contagion of sympathy," it must be done naturally. Mark Antony's artificial self-restraint and simulated outburst of passion, would seem as melodramatic **Exhibition of Feeling Must be Genuine.** in an American political meeting, as Burke's dagger-scene did in the House of Commons, with Sheridan to supplement it. The performance of an actor is not that of an orator. "Violent displays of feeling will not inflame the feelings of others. We expect of one who is entitled to our sympathy, a reserve and self-control, which suggest an intensity of feeling greater than he expresses. Not merely the strongest thinkers, and ablest and most convincing reasoners, but many of the most impressive and persuasive rhetoricians of modern times, have been remarkable rather for moderation than exaggeration in expression. It was a maxim of Webster's, that violence of language was indicative of feebleness of thought and want of reasoning power, and it was his practice rather to understate than overstate the strength of his confidence in the soundness of his own arguments and the logical necessity of his conclusions. He kept his auditor constantly in advance of him, by suggestion rather than by strong asseveration, by a calm exposition of considerations which ought to excite feeling in the heart of both speaker and hearer, not by an undignified and theatrical exhibition of passion in himself. And this is indeed the sound practical interpretation of the Horatian precept:—

‘ Wouldst thou unseal the fountain of my tears  
Thyself the signs of grief must show.’ ” <sup>1</sup>

The speaker may bring before his hearers the facts,

<sup>1</sup> Marsh, *Lectures on the English Language*, 235.

incidents and scenes which stir his own soul, so presenting them as to produce upon others the same effect which they have had upon himself. “Deductions have no power of persuasion. The heart is commonly reached, not through the reason, but through the imagination, by means of direct impression, by the testimony of facts and events, by history, by description. Persons influence us, voices melt us, looks subdue us, deeds inflame us.”<sup>1</sup> The feelings are not the product of “special creation” but of “evolution.” Time is, therefore, required for their development. Details must be given in such number as will afford time to produce their effect. Macaulay describing the effects of the French Revolution says: “Down went the old church of France with all its pomp and wealth.” Then by adding details he gives the imagination time to realize the main truth that the church was destroyed: “The churches were closed; the bells were silent; the shrines were plundered; the silver crucifixes were melted down; buffoons dressed in surplices came dancing down the campagnole, even to the bar of the Convention.” Burke, in describing the cruelties of Debi Sing, has shown to what extent feelings may be stirred by a vivid recital of details: —

“But, to pursue this melancholy but necessary detail. I am next to open to your Lordships, that the most substantial and leading yeomen, the responsible farmers, the parochial magistrates and chiefs of villages, were tied two and two by the legs together; and their tormentors, throwing them with their heads downwards, over a bar, beat them on the soles of the feet with rattans, until the nails fell from the toes; and then attacking them at their heads, as they hung downward, as before at

<sup>1</sup> J. H. Newman, *Discussions and Arguments*, 293.

their feet, they beat them with sticks and other instruments of blind fury, until the blood gushed out at their eyes, mouths, and noses. Not thinking that the ordinary whips and cudgels, even so administered, were sufficient, to others (and often also to the same who had suffered as I have stated) they applied, instead of rattan and bamboo, whips made of the branches of the bale-tree, — a tree full of sharp and strong thorns, which tear the skin and lacerate the flesh far worse than ordinary scourges. For others, exploring with a searching and inquisitive malice, stimulated by an insatiate rapacity, all the devious paths of Nature for whatever is most unfriendly to man, they made rods of a plant highly caustic and poisonous, called *Bechettea*, every wound of which festers and gangrenes, adds double and treble to the present torture, leaves a crust of leprous sores upon the body and often ends in the destruction of life itself. At night, these poor innocent sufferers, these martyrs of avarice and extortion, were brought into dungeons ; and, in the season when nature takes refuge in insensibility from all the miseries and cares which wait on life, they were three times scourged, and made to reckon the watches of the night by periods and intervals of torment. They were then led out, in the severe depth of winter, which there at certain seasons would be severe to any, to the Indians is most severe and almost intolerable, — they were led out before break of day, and, stiff and sore as they were with the bruises and wounds of the night, were plunged into water ; and, whilst their jaws clung together with the cold, and their bodies were rendered infinitely more sensible, the blows and stripes were renewed upon their backs ; and then, delivering them over to soldiers, they were sent into their farms and villages to discover where the few handfuls of grain might be found concealed, or to extract some loan from the remnants of compassion and courage not subdued in those who had reason to fear that their own turn of torment would be next, and that their very humanity, being taken as a proof of their wealth, would subject them (as it did in many cases subject them) to the same inhuman tortures. After this circuit of the day through their plundered and ruined villages, they were remanded at night to the same prison,



whipped, as before, at their return to the dungeon, and at morning whipped at their leaving it, and then sent, as before, to purchase, by begging in the day, the reiteration of the torture in the night. Days of menace, insult, and extortion, nights of bolts, fetters, and flagellation, succeeded to each other in the same round, and for a long time made up all the vicissitudes of life to those miserable people.”<sup>1</sup>

Burke’s occasion was one in centuries. There is danger, on ordinary occasions, of too prolonged detail. Enough to set the imagination vividly at work is all that is needed. Webster’s narrative at the  
**Too Many  
Details.** beginning of his speech at the White murder trial is a model.<sup>2</sup> Only the most suggestive details are given. The speaker knew his jurors would complete the picture. Burke knew how to suppress or suggest as well as use detailed description and narration. The horror of the war in the Carnatic country might have been expressed by a mere statement of fact. “It was a war of extermination;” or by a statement of fact accompanied by some expression of the speaker’s feeling, “The war was murderous, inhuman, devilish!” Or a detail of its horrors might have been given throughout, like that of the cruelty of Debi Sing. But in a manner more effective than any of these, he suppresses his indignation, says nothing of the character of the war, gives the effects, and lets them speak for themselves:—

“For eighteen months, without intermission, this destruction raged from the gates of Madras to the gates of Tanjore; and so completely did these masters in their art, Hyder Ali and his more ferocious son, absolve themselves of their impious vow, that, when the British armies traversed, as they did, the Car-

natic for hundreds of miles in all directions, through the whole line of their march they did not see one man, not one woman, not one child, not one four-footed beast of any description whatever. One dead, uniform silence reigned over the whole region." <sup>1</sup>

The value of the concrete and the specific, is nowhere else so pronounced as in persuasive address. A few individual instances appeal to the sympathies more than hours of generalization. General Armstrong, seeking contributions for the support of the Hampton Normal and Industrial School, did wisely to take with him on his tours, a few of the colored boys and young Indians, educated there, and let them show in their own way what the school had done for them,—what they were when they entered the school, and what they are now. He seldom had to ask for contributions. Such interest, sympathy, and confidence were created by the boys' appearance that someone in the audience would propose "a collection." This gave opportunity for a brief explanation of the specific needs of the school, and of the good which every contributed dollar might do. No amount of talk about the worthiness of the enterprise would have effected so much.

**Value of  
Concrete and  
Specific.**

The preacher who denounces "sin" in general, makes little headway against any particular kind of wrongdoing. He might score liars, thieves and swindlers; but this would be less effective than to show the effect upon themselves and upon their families, of Jones's lying, Brown's stealing and Smith's gambling. At the trial of Surratt for complicity in the assassination of Lincoln,

<sup>1</sup> *Burke's Works*, III. 159.

the prosecutor spread out before the jury, maps showing the prisoner's line of travel, the guns hidden at Loyd's tavern, the diary of Booth, his eyeglasses, and the registers of hotels where Surratt had lodged. Although testimony could prove all these as facts in the case, it could not make them so vivid and so impressive as the sight of the things on the table could do. "Emotion links itself with particulars, and only in a faint and secondary manner with abstractions. An orator may discourse very eloquently on injustice in general, and leave his audience cold; but let him state a special case of oppression, and every heart will throb. The most untheoretic persons are aware of this relation between true emotion and particular facts, as opposed to general terms, and implicitly recognize it in the repulsion they feel towards any one who professes strong feeling about abstractions, — in the interjectional 'humbug!' which immediately rises to their lips."<sup>1</sup>

Iteration of a single striking fact may intensify feeling. Dickens uses this method effectively after describing the death of little Joe. Burke is a master of iteration for the sake of intensifying persuasion as well as of enforcing argument. But repetition easily degenerates into bare tautology, and wordiness is a capital fault: it allows feeling to cool. The reserve force back of Virginius's "I'll be patient," has a much more powerful effect than all Lear's mad ranting.

Variety both in what is presented, and in the manner of presentation, is desirable, whether the speaker is aim-

<sup>1</sup> For a good example of arousing feeling by individual instance, see *Great Speeches*, 348.

ing at different classes in his audience, or at a single class or an individual. Monotony wearies attention and deadens sensibility. Much of Gough's power over audiences lay in his wealth of resource and his manner of drawing upon it. Every sentiment was appealed to; almost every possible method of appeal was used. Description and narrative, exposition and argument, brief, bright, rapid, each helping the rest, and all in quick succession, were made to direct thought and feeling to the one main object and do the work of persuasion. All was used with a singleness of purpose. Some things said struck one class of listeners, and some things struck all. Behind every utterance was the strong personality of the speaker, fired with a single idea which gave relevancy, coherence and unity.

Variety in  
Method.

Matter, method, and manner, must be adapted to those addressed. Audiences differ in quickness of perception, in sensibility and in power to estimate motives. What would deeply touch a Chautauqua Assembly might have little effect on the Concord School of Philosophy, and *vice versa*. The ignorant are easily stirred; the educated less easily. Professor Drummond tells,<sup>1</sup> 'that on one occasion in Africa four of his carriers ran away. There were three of the same tribe in the company, and though he knew nothing of their dialect, he determined, being in danger of losing his life, to teach them a lesson. Beginning with a few general remarks on the heathen, he briefly sketched the geology of Africa and then broke into an impassioned defense of the British constitution. The three tribesmen trembled like aspen leaves. He concluded his reprimand by solemnly

Adaptation.

<sup>1</sup> *Tropical Africa.*



enunciating the forty-seventh proposition of Euclid, and the result of the awful admonition was that the men became the most faithful that he ever had.'

After the defeat of the Union army at Bull Run, General Garfield quieted the terror-stricken mob in New York by his oracular, "God reigns and the government at Washington still lives." Governor Rusk dispersed a different kind of a mob in Milwaukee in a different way: "If these streets are not cleared in two minutes, I'll order the militia to let daylight into every one of you." Neither of these speeches would have had much effect on the Paris mobs. It is easier to awaken the sympathy of a petit jury than of a bench of judges. It requires less to move a popular assembly than would move a body of senators. As intellectual power increases, the emotional nature, as a rule, recedes, so that the preacher *argues* more to a cultured congregation, but uses persuasive methods more with the uncultured. If he attempts to persuade the intellectual he must use all his subtlety, watching their moods and carefully adapting himself to changes. The speaker has this advantage over the writer, that he addresses a definite audience. It is possible, therefore, for him to identify himself in general characteristics with his hearers, to adapt each part of his speech to the progressive movement of their minds, and to change his method in order to meet their changing attitude toward the proposed ends.

Hermann Grimm says, "When you find a really great man, you always find him a perfectly simple man." An intelligent audience, whether consciously or not, applies this principle to one appealing to them. Anything like pretense, any exhibi-

**Simplicity  
in Manner.**

tion of egotism, self-consciousness, effort to be eloquent, is fatal to success in persuasion. "A fundamental element of a preacher's power is freedom from self-consciousness. If he asks 'How shall I do this most creditably to myself?' his sermon will have a different effect than if he asks 'How may I do this most effectively for others?'" There is wonderful clearness and economy of force in simplicity. No man ever thought whether he were preaching well, without weakening his sermon. I think there are few higher or more delightful moments in a preacher's life than those which come sometimes when, standing before a congregation and haunted by questions about the merits of his preaching, which he hates but cannot drive away, at last suddenly or gradually he finds himself taken into the power of his truth, absorbed in one sole desire to send it into the men he is preaching to; and then every sail is set, his sermon goes bravely out to sea, leaving self high and dry upon the beach where it has been holding his sermon stranded."<sup>1</sup>

In persuasion a lofty oratorical style is less effective than the simple utterance of the truth. "If readers are thinking about a writer's style, or hearers about an orator's eloquence, they are less likely to be influenced by him than if they are so fully absorbed in what he is saying as to pay no attention to the manner in which it is said. If a writer or an orator is thinking of his own style, he may please his readers or his hearers with well-turned periods or sounding phrases, but he will not move them; for he will inevitably betray the fact that manner is more to him than matter. If his mind is full of his purpose, he

**Simplicity  
in Style.**

<sup>1</sup> Phillips Brooks, *Lectures on Preaching*, 52.

will express himself simply. 'I believe it to be true,' says Emerson, 'that when any orator at the bar or in the Senate rises in his thought, he descends in his language, — that is, when he rises to any height of thought or of passion he comes down to a language level with the ear of all his audience. It is the merit of John Brown and of Abraham Lincoln — one at Charlestown, one at Gettysburg — in the two best specimens of eloquence we have had in this country.'"<sup>1</sup>

The greatness of the thought or the emotion expressed, the earnestness of the man, his absorption in the theme, and his evident interest in those addressed, rather than the pomp of declamation, give a speaker persuasive power. It was the clear, earnest, simple, sincere expression of his profound convictions that gave this power to Webster. What would have been the result had he been thinking of his own eloquence when delivering the peroration of the *Reply to Hayne*, or making his appeal for Dartmouth College? "Demosthenes had a single object and a rigid purpose; he spoke in a severe, intense state of mind, meaning to accomplish something and make men act. He aimed to convince the hearer and sweep him along in his direction, to the same goal for which he was making. Cicero, on the other hand, was sometimes less earnest, more easy, sportive, pleasing, charming, winning admiration. Consequently he makes the orator and his oratory prominent. He never forgets the importance of the speaker; while Demosthenes so links himself, identifies himself with the cause that he is lost in it. Therefore while the audience and the reader have unbounded

<sup>1</sup> A. S. Hill, *Principles of Rhetoric*, 398.

admiration for the great Roman, the Greek gets his own better praise when his auditors at the end of one of his Phillippics rise up and cry, 'Let us march against Phillip!' " <sup>1</sup>

The principle of climax is quite as important in persuasive, as in argumentative discourse. If persuasion pervades the entire speech it should increase with the progress of the speech. Mark Antony's oration is an example; Burke's speeches on American subjects also illustrate the principle; so do Webster's Constitutional speeches. An appeal, an array of persuasive details, an exhibition of feeling that would be appropriate and effective at the close of a speech, would be unwarranted at the beginning, and would render tame and ineffective what would follow. A high pitch sustained from beginning to end, if that were possible, would weary by its monotony. The same principle holds in a briefer part of a discourse,—the introduction, any passage in the body of arguments, or the conclusion. The closing paragraph in Brougham's speech in defense of Queen Caroline <sup>2</sup> cannot be excelled as an arrangement of this kind:—

"Such, my lords, is the Case now before you! Such is the evidence in support of this measure—evidence inadequate to prove a debt—impotent to deprive of a civil right—ridiculous to convict of the lowest offence—scandalous if brought forward to support a charge of the highest nature which the law knows—monstrous to ruin the honour, to blast the name of an English Queen! What shall I say, then, if this is the proof by which an act of judicial legislation, a parliamentary sentence, an *ex-post facto* law, is sought to be passed against this defenseless woman? My lords, I pray you to pause. I do

<sup>1</sup> Sears, *History of Oratory*, 125.

<sup>2</sup> *Speeches on Social and Political Subjects*.



earnestly beseech you to take heed ! You are standing upon the brink of a precipice—then beware ! It will go forth, your judgment, if sentence shall go against the Queen. But it will be the only judgment you ever pronounced, which, instead of reaching its object, will return and bound back upon those who give it. Save the country, my lords, from the horrors of this catastrophe—save yourselves from this peril—rescue that country, of which you are the ornaments, but in which you can flourish no longer, when severed from the people, than the blossom when cut off from the roots and the stem of the tree. Save that country, that you may continue to adorn it—save the Crown, which is in jeopardy—the Aristocracy, which is shaken—save the Altar, which must stagger with the blow that rends its kindred Throne ! You have said, my lords, you have willed—the Church and the King have willed—that the Queen shall be deprived of its solemn service. She has instead of that solemnity, the heartfelt prayers of the people. She wants no prayers of mine. But I do here pour forth my humble supplications at the Throne of Mercy, that that Mercy may be poured down upon the people, in a larger measure than the merits of their rulers may deserve, and that your hearts may be turned to justice ! ”

## CHAPTER IV.

## THE CONCLUSION OR PERORATION.

The third and last division of an argumentative discourse is the conclusion or peroration. Whether it is an essential part or not, whether it should be brief or extended, whether it should reinforce conviction or supplement it with persuasion, depends on the subject and the character of the previous discussion. Its purpose is to secure final effectiveness, whether by refreshing the memory, driving home and clinching arguments, pointing out clearly their application, or stimulating to action by appeal to feeling.

**Purpose.**

Frequently the peroration is omitted. If a speech is brief, if every explanation has been satisfactory, and every argument complete and convincing; if the plan has been clear and the order of presentation so natural that the memory readily recalls the whole; if it is evident that an audience is won at the close of the discussion, — no peroration is necessary. It would be likely to do more harm than good. What had been convincing to the audience, might now seem to them not convincing to the speaker. It is a good thing to know when to stop. In some of Burke's long speeches, frequent summaries at the close of definite lines of reasoning, and the persuasive character of the whole, take the place of a formal peroration.

**When it  
May be  
Omitted.**

The work of the peroration may be argumentative; not that new arguments are to be introduced, but those already presented may be given additional force, by

massing, by new connections, or a new order. They may gain force by amplification at a vital point, or by being put into sharp contrast with an opponent's arguments. In Burke's American speeches what he calls the *conclusion* consists (aside from answers to objections), of a continuation of argument, presented in a new way, shown under a new light and from a different point of view, and with more pointed statement of the different effects of adopting one or another policy. In sharp antithesis and incisive statements, he amplifies what makes for his proposition, and diminishes what makes against it. In some of his speeches, Webster appeals at the close to the judgment only.

One common and effective method of deepening conviction by a peroration, is to recapitulate. This refreshes the memory, gives the body of arguments momentum, and affords opportunity for more effective arrangement, if for any reason this is necessary. Recapitulation is desirable if arguments have been long, numerous or complex. Webster sometimes uses this method alone, and sometimes combines it with appeal. At the close of *The Case of Ogden and Saunders*, he says:—

“To recapitulate what has been said, we maintain, First, that the Constitution, by its grants to Congress and its prohibitions on the States, has sought to establish one uniform standard of value, or medium of payment. Second, that by like means, it has endeavored to provide for one uniform mode of discharging debts, when they are to be discharged without payment. Third, that these objects are connected, and that the first loses much of its importance if the last also be not accomplished. Fourth, that, reading the grant to Congress and the prohibition

on the States together, the inference is strong that the Constitution intended to confer an exclusive power to pass bankrupt laws on Congress. Fifth, that the prohibition in the tenth section reaches to all contracts, existing or future, in the same way that the other prohibition in the same section extends to all debts existing or future. Sixth, that upon any other construction, one great political object of the Constitution will fail of its accomplishment.”<sup>1</sup>

He closes the *Speech on the Murder of Captain Joseph White*, with a summary of what has been proved, the points upon which the jury must be satisfied, and an appeal to the jury to be faithful to duty.<sup>2</sup> He closes *The Presidential Protest*, with a succinct recapitulation of the points in his opponent's doctrine, so stated as to bear in themselves evident antagonism to the spirit of the American Constitution, and follows this with a brief statement of what must result if these be true. Then he expresses his confidence that the people will approve the Senate's action : —

“The President is President. His office and his name of office are known, and both are fixed and described by law. Being commander of the army and navy, holding the power of nominating to office and removing from office, and being, by these powers, the fountain of all patronage and all favour, what does he not become if he be allowed to superadd to all this the character of single representative of the American people ? Sir, he becomes what America has not been accustomed to see, what this Constitution has never created, and what I cannot contemplate but with profound alarm. He who may call himself the single representative of a nation, may speak in the name of the nation ; may undertake to wield the power of the nation ; and who shall gainsay him, in whatsoever he chooses to pronounce as the nation's will ?

“I will now, Sir, ask leave to recapitulate the general doc-

<sup>1</sup> *Great Speeches*, 188.

<sup>2</sup> Page 329.



trines of this Protest, and to present them together. They are :—

“ That neither branch of the legislature can take up, or consider, for the purpose of censure, any official act of the President, without some view to legislation or impeachment ;

“ That not only the passage, but the discussion, of the resolution of the Senate of the 28th of March, was unauthorized by the Constitution, and repugnant to its provisions ;

“ That the custody of the public treasury must always be intrusted to the executive ; that Congress cannot take it out of his hands, nor place it anywhere except under such superintendents and keepers as are appointed by him, responsible to him, and removable at his will ;

“ That the whole executive power is in the President, and that therefore the duty of defending the integrity of the Constitution *results to him from the very nature* of his office ; and that the founders of our republic have attested their sense of the importance of this duty, and, by expressing it in his official oath, have given to it peculiar solemnity and force ;

“ That, as he is to take care that the laws be faithfully executed, he is thereby made responsible for the entire action of the executive department, with power of appointing, overseeing, and *controlling* those who execute the laws ;

“ That the power of removal from office, like that of appointment, is an *original* executive power, and is *left* in his hands *unchecked* by the Constitution, except in the case of judges ;

“ That, being responsible for the exercise of the whole executive power, he has a right to employ agents of his own choice to assist *him* in the performance of *his* duties, and to discharge them when he is no longer willing to be responsible for their acts ;

“ That the Secretaries are *his* Secretaries, and all persons appointed to offices created by law, except the judges, *his* agents, responsible to him, and removable at his pleasure ;

“ And, finally, that he is the *direct representative of the American people*.

“ These, Sir, are some of the leading propositions contained in the Protest ; and if they be true, then the government under

which we live is an elective monarchy. It is not yet absolute ; there are yet some checks and limitations in the Constitution and laws ; but, in its essential and prevailing character, it is an elective monarchy.

“ Mr. President, I have spoken freely of this Protest, and of the doctrines which it advances ; but I have spoken deliberately. On these high questions of constitutional law, respect for my own character, as well as a solemn and profound sense of duty, restrains me from giving utterance to a single sentiment which does not flow from entire conviction. I feel that I am not wrong. I feel that an inborn and inbred love of constitutional liberty, and some study of our political institutions, have not on this occasion misled me. But I have desired to say nothing that should give pain to the chief magistrate personally. I have not sought to fix arrows in his breast ; but I believe him mistaken, altogether mistaken, in the sentiments which he has expressed ; and I must concur with others in placing on the records of the Senate my disapprobation of those sentiments. On a vote which is to remain so long as any proceeding of the Senate shall last, and on a question which can never cease to be important while the Constitution of the country endures, I have desired to make public my reasons. They will now be known, and I submit them to the judgment of the present and of after times. Sir, the occasion is full of interest. It cannot pass off without leaving strong impressions on the character of public men. A collision has taken place which I could have most anxiously wished to avoid ; but it was not to be shunned. We have not sought this controversy : it has met us, and been forced upon us. In my judgment, the law has been disregarded, and the Constitution transgressed ; the fortress of liberty has been assaulted, and circumstances have placed the Senate in the breach ; and, although we may perish in it, I know we shall not fly from it. But I am fearless of consequences. We shall hold on, Sir, and hold out, till the people themselves come to its defence. We shall raise the alarm, and maintain the post, till they whose right it is shall decide whether the Senate be a faction, wantonly resisting lawful power, or whether it be opposing, with firmness and

patriotism, violations of liberty and inroads upon the Constitution.”<sup>1</sup>

Aristotle gives four functions to the peroration, two of which are performed by persuasion: inclining the judges to favor the speaker and disfavor his adversary; and as accessory to this, moving the judges to anger, love, pity or other passions. Here what was begun in the introduction may be completed: conciliation may be concluded; false impressions may be corrected; friendly feeling and confidence may be strengthened. Prejudices having been removed, appeals can be made that could not be made earlier. The whole body of argument having been presented, there is a rational basis for action; and the speaker may now place himself, his cause, the interests of the hearers themselves, before them in a way to stir them to action. If conviction falls just short of deciding a matter, if the audience or jury are fully convinced, but through apathy, conservativeness, uncertainty as to consequences or any other reason, are loath to act, a persuasive peroration or an appeal is likely to be effective. *The Reply to Hayne* would have fallen far short of its effect without the magnificent embodiment of the “subject, the man and the occasion” at the close.

The peroration may take the form of direct appeal to adopt or to reject a principle or course of action, as in Lord Chatham’s *Speech on American Affairs*, answering the proposition to employ Indians in the war; “for it was perfectly justifiable to use all the means that God and nature put into our hands”: —

**Direct  
Appeal.**

<sup>1</sup> *Great Speeches*, 392.

“These abominable principles, and this more abominable avowal of them, demand the most decisive indignation. I call upon that right reverend bench, those holy ministers of the Gospel, and pious pastors of our Church—I conjure them to join in the holy work, and vindicate the religion of their God. I appeal to the wisdom and the law of this learned bench to defend and support the justice of their country. I call upon the Bishops to interpose the unsullied sanctity of their lawn; upon the learned Judges, to interpose the purity of their ermine, to save us from this pollution. I call upon the honor of your Lordships to reverence the dignity of your ancestors, and to maintain your own. I call upon the spirit and humanity of my country to vindicate the national character. I invoke the genius of the Constitution. From the tapestry that adorns these walls, the immortal ancestor of this noble lord frowns with indignation at the disgrace of his country. In vain he led your victorious fleets against the boasted Armada of Spain; in vain he defended and established the honor, the liberties, the religion—the Protestant religion—of this country, against the arbitrary cruelties of Popery and the Inquisition, if these more than popish cruelties and inquisitorial practices are let loose among us—to turn forth into our settlements, among our ancient connections, friends, and relations, the merciless cannibal, thirsting for the blood of man, woman, and child! to send forth the infidel savage—against whom? against your Protestant brethren; to lay waste their country, to desolate their dwellings, and extirpate their race and name with these horrible hell-hounds of savage war—hell-hounds, I say, of savage war! Spain armed herself with blood-hounds to extirpate the wretched natives of America, and we improve on the inhuman example even of Spanish cruelty; we turn loose these savage hell-hounds against our brethren and countrymen in America, of the same language, laws, liberties, and religion, endeared to us by every tie that should sanctify humanity.

“My Lords, this awful subject, so important to our honor, our Constitution, and our religion, demands the most solemn and effectual inquiry; and I again call upon your Lordships,



and the united powers of the State, to examine it thoroughly and decisively, and to stamp upon it an indelible stigma of the public abhorrence. And I again implore those holy prelates of our religion to do away these iniquities from among us. Let them perform a lustration; let them purify this House, and this country, from this sin.”<sup>1</sup>

The peroration may be such a resumé of what has been presented as to show that the speaker's promises at the outset have been fulfilled. It may be a resumé

of the motives toward the proposed act or  
**Other Kinds.** course of action. This is not infrequent in  
**Qualities.**

Webster's speeches. It may combine many elements of persuasive discourse in rapid succession,—story, characterization, argument, invective, appeal to sympathy, to justice, to humanity to fear; it may have the simplicity and familiarity of the Justice's Court, or the gravity and dignity of the House of Lords: but it must be orderly, natural, sincere and earnest. It must make old material seem fresh. It must be brief without incompleteness, concise without obscurity, direct, forceful, compelling men to seize, hold and act upon the truth established, or to abandon the error overthrown.

The most illustrious secular orators have been great in the practical uses of truth. As we might expect, their power has culminated in their conclusions. There

they have girded themselves for the conquest  
**Care in** of their audiences. The ancient orators  
**Composing**  
**Perorations.** threw the utmost vehemence of appeal into

their perorations. Their whole reserve of might and will was often hurled in that last onset upon the will of their hearers. They studied, planned, executed,

<sup>1</sup> Bradley, *Arguments and Orations*, 85.

finished their conclusions with most sedulous care. Their fame rests more surely upon their perorations than upon any other one feature of their oratory.

“Modern eloquence, also, has examples of the same concentration of force, impetuosity of movement, and premeditated skill in conclusions. The closing paragraphs of Edmund Burke’s first speech on the impeachment of Warren Hastings<sup>1</sup> did more to create and perpetuate his fame than did any other passage of his writings. Hastings himself said that in listening to this, he felt himself to be the most guilty man alive. Those paragraphs Burke elaborated sixteen times before their delivery. Lord Brougham’s conclusion of his defense of Queen Caroline<sup>2</sup> established his fame as an advocate more securely than anything else of equal length, that he ever wrote. That conclusion he wrote and re-wrote twenty times. Probably with no thought of rhetorical art as such, these men achieved these triumphs of oratorical genius through the mere concentration of their whole mental and moral being upon the attainment of their object.”<sup>3</sup>

The following examples will illustrate the wide diversity of plan, material, manner of treatment, and style, in successful perorations :—

“The whole story is romantic. The plaintiff, as you have seen, is growing old, a farmer, honest, industrious and ingenious ; he has peddled some and once been a livery man, later became a merchant. In 1877 he started a hardware, tinware and peddlers’ supplies store, and later had a branch house. He had little or no education, was not even able to read or write, save his own name, and that little learning was a damage to him, for he

**Closing of a  
Fraud Case.**

<sup>1</sup> Page 231.

<sup>2</sup> Page 253.

<sup>3</sup> Phelps, *Lectures on Preaching*, 495.

signed checks in blank, and trusted them to boys to be filled out to his prejudice, and finally to his financial ruin.

“ His business career is the very one likely to follow men of his lack of fitness to battle with the storms and financial disasters that came in 1878—that whirlwind of bankruptcy and failure that swept through the country like a tornado, breaking down strong houses and carrying away men that had before known only success and prosperity ; that time when the whole nation was rocked by the strong storm of financial upheaving ; when the broken stocks were thrown on the market, when tramps paraded the country, when men cried for greenbacks and a change—any change—in money matters, till the whole bottom of our financial creation seemed falling out, and the buildings were rolling together in the ruins, then was the failure of this farmer merchant. . . .

“ But of all of these mighty firms that went under, and paid ten cents to thirty cents on the dollar, none were arrested for fraud, none arrested for false pretenses ; some failed and grew rich ; many of them have prospered since, and seemed honest. And when this poor farmer failed—a natural failure—what do we find ? This we find ! They hunt him from his store, arrest him for debt ! False pretenses ! drive him to Canada ! in exile from his family, and there keep him seven months, in poverty and rags, till he almost starved to death, living on seven cents a day, then they send lawyers, and try to force him to tell lies, then sign written statements of lies, then swear to lies, and he refuses till counsel is sent for, and advise him to go home ! And he goes home ; and lo ! all he had is swept away ! He had secured his boy, Clarence, for money borrowed, and his friend for more ; but all is gone and he is poor !

“ It was an old Roman Commoner, with shaggy hair and grizzly beard and bent form and ragged clothes, who nearly three thousand years ago, said : ‘ Romans, I am from your debtors’ prison. Once I traded on your streets, and borrowed and paid again. One day I was surety for a friend who failed, and I, too, failing to make good the debt, was hurried to the prison cell. Romans, I am free now. It is not for myself I

“speak thus, but lest others go where I have been, I would abolish such a human curse!’ His story moved all Rome! That prison was abolished, and more than thirty years ago, in Pennsylvania, James Buchanan abolished imprisonment for debt, by a powerful appeal in his state, and here in our state the intelligence of the people wiped it from our statute books, and still a barbarous relic of false pretenses remains!

“And here is the Roman Commoner who pleads by his looks and acts, ‘I would abolish such a curse!’ What has he done? Deep in trade, met every dollar ever due, even to the day of his leaving for Canada; and still the great big greedy firms bear down on him with iron hands, to crush him and not only hold all he has, but would have you rob him of the last bright jewel of his life—his good name, his honor—and brand him as a fraud and bring him on to prove he is a fraud! This is the grandest audacity I ever saw. It is not enough to take his goods and break him up, but they take his boy’s mortgage, his exemption that the state allows, and all he had, and cry for more! This is not fair. It is wrong. It is cruel. It is barbarous. It is inhuman. It is absolutely cruel. It is *mean*, gentleman!

“They claim he secured us on all he had, while *they* are his friends. *They his friends!* Well, gentlemen, when I am fifty-five, and want a friend, and have had one who trusted me to goods and money, one I confided in, and I secure him, and others get jealous and arrest me, try to put me in the debtor’s prison, drive me from home, seven long months in poverty and rags, try to buy me to lie and swear to lying statements, and at last promise to pay my friend, save some for my boy, and I come home and find their attachments have taken all, and all is gone! which shall I chose for a friend? This is worse than border ruffians do! Let me illustrate by a story:—

“It was a hot evening in July, 1860, a herdsman was moving his cattle to a new ranch further north, near Helena, Texas, and passing down the banks of a stream his herd became mixed with other cattle that were grazing in the valley, and some of them failed to be separated. The next day about noon a band



of a dozen mounted Texas Rangers overtook the herdsman and demanded their cattle, which they said were stolen.

“It was before the days of law and court houses in Texas, and one had better kill five men than to steal a mule worth five dollars, and the herdsman knew it. He tried to explain, but they told him to cut his story short. He offered to turn over all the cattle not his own, but they laughed at this proposition, and hinted that they usually confiscated the whole herd and left the thief hanging on a tree as a warning to others in like cases.

“The poor fellow was completely overcome. They consulted apart a few moments, and then told him if he had any explanations to make or business to do, they would allow him ten minutes. He turned to the rough faces, and commenced: ‘How many of you men have wives?’ Two or three nodded. ‘How many of you have children?’ They nodded again.

“‘Then I know who I am talking to, and you’ll hear me.’ And he continued: ‘I never stole any cattle; I have lived in these parts over three years. I came from New Hampshire; I failed there in the fall of ’57, during the panic. I have been saving; I lived on hard fare; I have slept out on the ground; I have no home here. My family remain East, for I go from place to place. These clothes I wear are rough, and I am a hard-looking customer; but this is a hard country. Days seem like months to me, and months like years; married men, you know that but for the letters from home’—here he pulled out a handful of well-worn envelopes and letters from his wife,—‘I should get discouraged. I have paid part of my debts. Here are the receipts,’—and he unfolded the letters of acknowledgement,—‘I expected to sell and go home in November. Here is the testament my good mother gave me; here is my little girl’s picture, God bless her!’ and he kissed it tenderly, and continued: ‘Now, men, if you have decided to kill me for doing what I am innocent of, send these home, and send as much as you can from the cattle, when I am dead. Can’t you send half their value?—my family will need it.’

“‘Hold on, now, stop right thar!’ said a rough ranger. ‘Now

I say, boys,' he continued, 'I say, let him go. Give us your hand, old boy; that picture and them letters did the business. You can go free; but you're lucky, mind ye.'

"'We'll do more'n that,' said a man with a big heart, in Texan garb and carrying the customary brace of pistols in his belt, 'let's buy his herd and let him go home now.'

"They did, and when the money was paid over, and the man about to start, he was too weak to stand. The long strain of hopes and fears, being away from home under such trying circumstances, the sudden deliverance from death, had combined to render him helpless as a child. He sank to the ground completely overcome. An hour later, however, he left on horseback for the nearest stage route, and, as they shook hands and bade him good-bye, they looked the happiest band of men ever seen.

"So deal with this farmer.

"Such men do not steal. Such men are not frauds.

"They claimed to be his friends. So do we. We met him in his dire distress. We saw him poor.

"Talk of jails, talk of prisons, talk of poverty and hunger! It was more.

"Poverty, rags and starvation! Not even the cattle that the exiled herdsman had! Banished from home! Unable to write! Deprived of the letters the herdsman had! The prisoner for debt was no more wronged than the farmer who had failed.

"Restore him his character, gentlemen; and think in after years, *how you hardened not your hearts!*"<sup>1</sup>

"My Lords, in the progress of this impeachment, you have heard our charges; you have heard the prisoner's plea of merits; you have heard our observations on them. In the progress of this impeachment, you have seen the condition in which Mr. Hastings received Benares; you have seen the condition in which Mr. Hastings received the country of the Rohillas; you have seen the condition in which he received the country of Oude; you have seen the condition in which he received the provinces of Bengal;

**Burke's Ap-  
peal for  
Judgment  
Upon  
Hastings.**

<sup>1</sup> Judge Donovan in *Modern Jury Trials*, 671.

you have seen the condition of the country when the native government was succeeded by that of Mr. Hastings ; you have seen the happiness and prosperity of all its inhabitants, from those of the highest to those of the lowest rank. My Lords, you have seen the very reverse of all this under the government of Mr. Hastings, — the country itself, all its beauty and glory, ending in a jungle for wild beasts. You have seen flourishing families reduced to implore that pity which the poorest man and the meanest situation might very well call for. You have seen whole nations in the mass reduced to a condition of the same distress. These things in his government at home. Abroad, scorn, contempt, and derision cast upon and covering the British name, war stirred up, and dishonourable treaties of peace made, by the total prostitution of British faith. Now take, my Lords, together, all the multiplied delinquencies which we have proved, from the highest degree of tyranny to the lowest degree of sharpening and cheating, and then judge, my Lords, whether the House of Commons could rest for one moment, without bringing these matters, which have baffled all legislation at various times, before you, to try at last what judgment will do. Judgment is what gives force, effect, and vigour to laws ; laws without judgment are contemptible and ridiculous ; we had better have no laws than laws not enforced by judgments and suitable penalties upon delinquents. Revert, my Lords, to all the sentences which have heretofore been passed by this High Court ; look at the sentence passed upon Lord Bacon, look at the sentence passed upon Lord Macclesfield ; and then compare the sentences which your ancestors have given with the delinquencies which were then before them, and you have the measure to be taken in your sentence upon the delinquent now before you. Your sentence, I say, will be measured according to that rule which ought to direct the judgment of all courts in like cases, lessening it for a lesser offense, and aggravating it for a greater, until the measure of justice is completely full.

“ My Lords, I have done ; the part of the Commons is concluded. With a trembling solicitude we consign this product of our long, long labours to your charge. Take it ! — take it ! It

is a sacred trust. Never before was a cause of such magnitude submitted to any human tribunal.

“My Lords, at this awful close, in the name of the Commons, and surrounded by them, I attest the retiring, I attest the advancing generations, between which, as a link in the great chain of eternal order, we stand. We call this nation, we call the world to witness, that the Commons have shrunk from no labour, that we have been guilty of no prevarication, that we have made no compromise with crime, that we have not feared any odium whatsoever, in the long warfare which we have carried on with the crimes, with the vices, with the exorbitant wealth, with the enormous and overpowering influence of Eastern corruption. This war we have waged for twenty-two years, and the conflict has been fought at your Lordships’ bar for the last seven years. My Lords, twenty-two years is a great space in the scale of the life of man ; it is no inconsiderable space in the history of a great nation. A business which has so long occupied the councils and the tribunals of Great Britain cannot possibly be huddled over in the course of vulgar, trite, and transitory events. Nothing but some of those great revolutions that break the traditionary chain of human memory, and alter the very face of Nature itself, can possibly obscure it. My Lords, we are all elevated to a degree of importance by it ; the meanest of us will, by means of it, more or less become the concern of posterity,—if we are yet to hope for such a thing, in the present state of the world, as a recording, retrospective, civilized posterity : but this is in the hands of the great Disposer of events ; it is not ours to settle how it shall be.

“My Lords, your house yet stands,—it stands as a great edifice ; but let me say that it stands in the midst of ruins,—in the midst of the ruins that have been made by the greatest moral earthquake that ever convulsed and shattered this globe of ours. My Lords, it has pleased Providence to place us in such a state, that we appear every moment to be upon the verge of some great mutations. There is one thing, and one thing only, which defies all mutation,—that which existed before the world, and will survive the fabric of the world itself :



I mean justice,—that justice which, emanating from the Divinity, has a place in the breast of every one of us, given us for our guide with regard to ourselves and with regard to others, and which will stand, after this globe is burned to ashes, our advocate or accuser before the great Judge, when He comes to call upon us for the tenour of a well-spent life.

“My Lords, the Commons will share in every fate with your Lordships ; there is nothing sinister which can happen to you, in which we shall not be involved. And if it should so happen that we shall be subjected to some of those frightful changes which we have seen ; if it should happen that your Lordships, stripped of all the decorous distinctions of human society, should, by hands at once base and cruel, be led to those scaffolds and machines of murder upon which great kings and glorious queens have shed their blood, amidst the prelates, amidst the nobles, amidst the magistrates who supported their thrones, may you in those moments, feel that consolation which I am persuaded they felt in the critical moments of their dreadful agony !

“My Lords, there is a consolation,—and a great consolation it is !—which often happens to oppressed virtue and fallen dignity. It often happens that the very oppressors and persecutors themselves are forced to bear testimony in its favour. I do not like to go for instances a great way back into antiquity. I know very well that length of time operates so as to give an air of the fabulous to remote events, which lessens the interest and weakens the application of examples. I wish to come nearer the present time. Your Lordships know and have heard (for which of us has not known and heard ?) of the Parliament of Paris. The Parliament of Paris had an origin very, very similar to that of the great Court before which I stand ; the Parliament of Paris continued to have a great resemblance to it in its constitution, even to its fall. The Parliament of Paris, my Lords, WAS ; it is gone ! It has passed away ; it has vanished like a dream ! It fell, pierced by the sword of the Comte de Mirabeau. And yet I will say that that man, at the time of his inflicting the death-wound of that Parliament, produced at once the shortest and the grandest funeral

oration that ever was or could be made upon the departure of a great court of magistracy. Though he had himself smarted under its lash, as every one knows who knows his history, (and he was elevated to dreadful notoriety in history,) yet, when he pronounced the death-sentence upon that Parliament, and inflicted the mortal wound, he declared that his motives for doing it were merely political, and that their hands were as pure as those of justice itself, which they administered. A great and glorious exit, my Lords, of a great and glorious body ! And never was an eulogy pronounced upon a body more deserved. They were persons, in nobility of rank, in amplitude of fortune, in weight of authority, in depth of learning, inferior to few of those that hear me. My Lords, it was but the other day that they submitted their necks to the axe ; but their honour was unwounded. Their enemies, the persons who sentenced them to death, were lawyers full of subtlety, they were enemies full of malice ; yet, lawyers full of subtlety, and enemies full of malice, as they were, they did not dare to reproach them with having supported the wealthy, the great, and powerful, and of having oppressed the weak and feeble, in any of their judgments, or of having perverted justice, in any one instance whatever, through favour, through interest, or cabal.

“ My Lords, if you must fall, may you so fall ! But if you stand,—and stand I trust you will, together with the fortune of this ancient monarchy, together with the ancient laws and liberties of this great and illustrious kingdom,—may you stand as unimpeached in honour as in power ! May you stand, not as a substitute for virtue, but as an ornament of virtue, as a security for virtue ! May you stand long, and long stand the terror of tyrants ! May you stand the refuge of afflicted nations ! May you stand a sacred temple, for the perpetual residence of an inviolable justice ! ” <sup>1</sup>

<sup>1</sup> *Select Works*, xii. 392.



## APPENDIX.





## HISTORY OF THE WHITE MURDER CASE.

Mr. Morrill's outline of the facts will assist the reader to understand the bearings of the argument.

Joseph White, Esq., was found murdered in his bed, in his mansion-house, on the morning of the 7th of April, 1830. He was a wealthy merchant of Salem, eighty-two years of age, and had for many years given up active business. His servant-man rose that morning at six o'clock, and on going down into the kitchen, and opening the shutters of the window, saw that the back window of the east parlor was open, and that a plank was raised to the window from the back yard; he then went into the parlor, but saw no trace of any person having been there. He went to the apartment of the maid-servant, and told her, and then into Mr. White's chamber by its back door, and saw that the door of his chamber, leading into the front entry, was open. On approaching the bed, he found the bed-clothes turned down, and Mr. White dead, his countenance pallid, and his night-clothes and bed drenched in blood. He hastened to the neighboring houses to make known the event. He and the maid-servant were the only persons who slept in the house that night, except Mr. White himself, whose niece, Mrs. Beckford, his house-keeper, was then absent on a visit to her daughter, at Wenham.

The physicians and the coroner's jury, who were called to examine the body, found on it thirteen deep stabs, made as if by a sharp dirk or poniard, and the appearance of a heavy blow on the left temple, which had fractured the skull, but not broken the skin. The body was cold, and appeared to have been lifeless many hours.

On examining the apartments of the house, it did not appear that any valuable articles had been taken, or the house ransacked for them; there was a *rouleau* of doubloons in an iron chest in his chamber, and costly plate in other apartments, none of which was missing.

Large rewards for the detection of the murderers were offered

by the heirs of the deceased, by the selectmen of the town, and by the Governor of the State. The citizens held a public meeting, and appointed a Committee of Vigilance, of twenty-seven members, to make all possible exertions to ferret out the offenders.

Meantime it was announced that a bold attempt at highway robbery was made in Wenham, by three footpads, on Joseph J. Knapp, Jr. and John Francis Knapp, on the evening of the 27th of April, while they were returning in a chaise from Salem to their residence in Wenham. They appeared before the investigating committee, and testified to the attack.

The account was immediately published in the Salem newspapers, with the editorial remark, that "these gentlemen are well known in this town, and their respectability and veracity are not questioned by any of our citizens."

Not the slightest clew to the murder could be found for several weeks, and the mystery seemed to be impenetrable. At length a prisoner in the jail at New Bedford, seventy miles from Salem, intimated that he could make important disclosures. A confidential messenger was immediately sent, to ascertain what he knew on the subject. The prisoner's name was Hatch; he had been committed before the murder. He stated that, some months before the murder, he had associated in Salem with Richard Crowninshield, Jr., of Danvers, and had often heard Crowninshield express his intention to destroy the life of Mr. White. Crowninshield was a young man, of bad reputation; though he had never been convicted of any offence, he was strongly suspected of several heinous robberies. He was of dark and reserved deportment, temperate and wicked, daring and wary, subtle and obdurate, of great adroitness, boldness, and self-command. He had for several years frequented the haunts of vice in Salem; and though he was often spoken of as a dangerous man, his person was known to few, for he never walked the streets by daylight. Among his few associates he was a leader and a despot.

The disclosures of Hatch received credit. When the Supreme Court met at Ipswich, the Attorney-General, Morton, moved for a writ of *habeas corpus ad testif.*, and Hatch was

carried in chains from New Bedford before the grand jury, and on his testimony an indictment was found against Crowninshield. Other witnesses testified that, on the night of the murder, his brother, George Crowninshield, Colonel Benjamin Selman, of Marblehead, and Daniel Chase of Lynn, were together in Salem, at a gambling-house usually frequented by Richard. These were indicted as accomplices in the crime and were all arrested on the 2d of May, arraigned on the indictment, and committed to prison to await the sitting of a court that should have jurisdiction of the offence.

A fortnight afterwards, Captain Joseph J. Knapp, a ship-master and merchant, a man of good character, received by mail a letter signed, "Charles Grant, Jr.," demanding a large sum of money and threatening to make ruinous disclosures if the money were not forthcoming at once.

This letter was an unintelligible enigma to Captain Knapp; he knew no man of the name of Charles Grant, Jr., and had no acquaintance at Belfast, a town in Maine, two hundred miles distant from Salem. After poring over it in vain, he handed it to his son, Nathaniel Phippen Knapp, a young lawyer; to him also the letter was an inexplicable riddle. Captain Knapp and his son Phippen, therefore, concluded to ride to Wenham, seven miles distant, and show the letter to Captain Knapp's other two sons, Joseph J. Knapp, Jr. and John Francis Knapp, who were then residing at Wenham with Mrs. Beckford, the niece and late house-keeper of Mr. White, and the mother of the wife of J. J. Knapp, Jr. The last-named read the letter, told his father it "contained a devilish lot of trash," and requested him to hand it to the Committee of Vigilance. Captain Knapp, on his return to Salem that evening, accordingly delivered the letter to the chairman of the Committee.

The next day J. J. Knapp, Jr. went to Salem, and requested one of his friends to drop into the Salem post-office the two following pseudonymous letters.

" May 13, 1830.

" GENTLEMEN OF THE COMMITTEE OF VIGILANCE,—Hearing that you have taken up four young men on suspicion of being concerned in the murder of Mr. White, I think it time to inform you that Stephen White



came to me one night and told me, if I would *remove* the old gentleman, he would give me five thousand dollars; he said he was afraid he would alter his will if he lived any longer. I told him I would do it, but I was *afear*ed to go into the house, so he said he would go with me, that he would try to get into the house in the evening and open the window, would then go home and go to bed and meet me again about eleven. I found him, and we both went into his chamber. I struck him on the head with a heavy piece of lead, and then stabbed him with a dirk; he made the finishing strokes with another. He promised to send me the money next evening, and has not sent it yet, which is the reason that I mention this.

"Yours, &c.,

"GRANT."

This letter was directed on the outside to the "Hon. Gideon Barstow, Salem," and put into the post-office on Sunday evening, May 16, 1830.

"*Lynn, May 12, 1830.*

"Mr. White will send the \$5,000, or a part of it, before to-morrow night, or suffer the painful consequences.

"N. CLAXTON, 4TH."

This letter was addressed to the "Hon. Stephen White, Salem, Mass.," and was also put into the post-office in Salem on Sunday evening.

When Knapp delivered these letters to his friend, he said, "My father has received an anonymous letter, and what I want you for is to put these in the post-office in order to nip this silly affair in the bud."

The Hon. Stephen White, mentioned in these letters, was a nephew of Joseph White, and the legatee of the principal part of his large property.

When the Committee of Vigilance read and considered the letter, purporting to be signed by Charles Grant, Jr., which had been delivered to them by Captain Knapp, they immediately despatched a discreet messenger to Prospect, in Maine, who explained his business confidentially to the postmaster there, deposited a letter addressed to Charles Grant, Jr., and awaited the call of Grant to receive it. He soon called for it, when an officer, stationed in the house, stepped forward and arrested him. On examining him, it appeared that his true

name was Palmer. While he protested his own innocence, he disclosed that he had been an associate of R. Crowninshield, Jr. and George Crowninshield; had spent part of the winter at Danvers and Salem, under the name of Carr; part of the time he had been their fellow, concealed in their father's house in Danvers; that on the 2d of April he saw from the windows of the house Frank Knapp and a young man named Allen ride up to the house; that George walked away with Frank, and Richard with Allen; that on their return, George told Richard that Frank wished them to undertake to kill Mr. White, and that J. J. Knapp, Jr. would pay one thousand dollars for the job. They proposed various modes of executing it, and asked Palmer to be concerned, which he declined. George said the house keeper would be away at the time; that the object of Joseph J. Knapp, Jr. was to destroy the will, because it gave most of the property to Stephen White; that Joseph J. Knapp, Jr. was first to destroy the will; that he could get from the housekeeper the keys of the iron chest in which it was kept; that Frank called again the same day, in a chaise, and rode away with Richard; and that on the night of the murder Palmer stayed at the Half-way House, in Lynn.

A warrant was issued at once against Joseph J. Knapp, Jr. and John Francis Knapp, and they were taken into custody and imprisoned to await the arrival of Palmer, for their examination.

Joseph J. Knapp, Jr., on the third day of his imprisonment, made a full confession that he projected the murder. He knew that Mr. White had made his will, and given to Mrs. Beckford, Knapp's mother-in-law, a legacy of fifteen thousand dollars; but if he died without leaving a will, he expected she would inherit nearly two hundred thousand dollars. He corroborated all that Palmer had said, and gave full details of the crime.

Joseph confessed further that the account of the Wenham robbery, on the 27th of April, was a sheer fabrication. After the murder Crowninshield went to Wenham in company with Frank to call for the one thousand dollars. He was not able to pay the whole, but gave him one hundred five-franc pieces.

Crowninshield related to him the particulars of the murder, told him where the club which he had used was hid, and said he was sorry Joseph had not got the right will, for if he had known there was another, he would have got it. Joseph sent Frank afterwards to find and destroy the club, but he said he could not find it. When Joseph made the confession, he told the place where the club was concealed, and it was there found; it was heavy, made of hickory, twenty-two and a half inches long, of a smooth surface and large oval head, loaded with lead, and of a form adapted to give a mortal blow on the skull, without breaking the skin; the handle was suited for a firm grasp. Crowninshield said he turned it in a lathe. Joseph admitted he wrote the two anonymous letters.

Crowninshield had hitherto maintained a stoical composure of feeling; but when he was informed of Knapp's arrest, his knees smote beneath him, the sweat started out on his stern and pallid face, and he subsided upon his bunk.

Palmer was brought to Salem in irons, and committed to prison. Crowninshield saw him taken from the carriage. He was put in the cell directly under that in which Crowninshield was kept. Several members of the Committee entered Palmer's cell to talk with him; while they were talking, they heard a loud whistle, and, on looking up, saw that Crowninshield had picked away the mortar from the crevice between the blocks of the granite floor of his cell. After the loud whistle, he cried out, "Palmer! Palmer!" and soon let down a string, to which were tied a pencil and a slip of paper. Two lines of poetry were written on the paper, in order that, if Palmer was really there, he should make it known by capping the verses. Palmer shrunk away into a corner, and was soon transferred to another cell.

A quantity of stolen goods was found concealed in the barn of Crowninshield, in consequence of information from Palmer.

Crowninshield, thus finding the proofs of his guilt and depravity thicken, committed suicide by hanging himself to the bars of his cell. He left letters to his father and brother, expressing in general terms the viciousness of his life, and his hopelessness of escape from punishment.

A special term of the Supreme Court was held at Salem on the 20th of July, for the trial of the prisoners charged with the murder; it continued in session till the 20th of August, with a few days' intermission. An indictment for the murder was found against John Francis Knapp, as principal, and Joseph J. Knapp, Jr. and George Crowninshield, as accessories.

The principal, John Francis Knapp, was first put on trial. An accessory in a murder could not be tried until a principal had been convicted. He was defended by advocates of high reputation for ability and eloquence; the trial was long and arduous, and the witnesses numerous. His brother Joseph, who had made a full confession, on the government's promise of impunity if he would in good faith testify the truth, was brought into court, called to the stand as a witness, but declined to testify. To convict the prisoner, it was necessary for the government to prove that he was *present*, actually or constructively, as an aider or abettor in the murder. The evidence was strong that there was a conspiracy to commit the murder, that the prisoner was one of the conspirators, that at the time of the murder he was in Brown Street at the rear of Mr. White's garden, and the jury were satisfied that he was in that place to aid and abet in the murder, ready to afford assistance, if necessary. He was convicted.



## DANIEL WEBSTER'S SPEECH ON THE MURDER OF CAPTAIN JOSEPH WHITE.

AN ARGUMENT AT THE TRIAL OF JOHN FRANCIS KNAPP,  
FOR THE MURDER OF JOSEPH WHITE, OF SALEM IN ES-  
SEX COUNTY, MASSACHUSETTS, ON THE NIGHT OF THE 6TH  
OF APRIL, 1830.<sup>1</sup>

I AM little accustomed, Gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice has it happened to me to be concerned on the side of the government in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret that it should have been thought necessary to suggest to you that I am brought here to "hurry you against the law and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure that in this court nothing can be carried against the law, and that gentlemen, intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I may be in some degree useful in investigating and discovering the truth respecting this most extraordinary murder. It has seemed to be a duty incumbent on me, as on every other citizen, to do my best and my utmost to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I can not have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be indifferent to the discovery and the punishment of this deep guilt. I cheerfully share in the opprobrium, how great soever it may be, which is

<sup>1</sup> By kind permission of Messrs. Little, Brown & Co., from the Great Speeches and Orations of Daniel Webster. With an essay on Webster as a master of English style. With two steel portraits. By Edwin P. Whipple.

cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing, this deed of midnight assassination, may be brought to answer for their enormous crime at the bar of public justice.<sup>1</sup>

Gentlemen, it is a most extraordinary case. In some respects, it has hardly a precedent anywhere ; certainly none in our New England history. This bloody drama exhibited no suddenly excited, ungovernable rage. The actors in it were not surprised by any lionlike temptation springing upon their virtue, and overcoming it, before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long-settled and deadly hate. It was a cool, calculating, money-making murder. It was all "hire and salary, not revenge." It was the weighing of money against life ; the counting out of so many pieces of silver against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder, for mere pay.<sup>2</sup> Truly, here is a new lesson for painters and poets. Whoever shall hereafter draw the portrait of murder, if he will show it as it has been exhibited, where such example was last to have been looked for, in the very bosom of our New England society, let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the bloodshot eye emitting livid fires of malice. Let him draw, rather, a decorous, smooth-faced, bloodless demon ; a picture in repose, rather than in action ; not so much an example of human nature in its depravity, and in its paroxysms of crime, as an infernal being, a fiend, in the ordinary display and development of his character.

The deed was executed with a degree of self-possession and steadiness equal to the wickedness with which it was planned. The circumstances now clearly in evidence spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoc-

<sup>1</sup> Pages 8-11, 223.

<sup>2</sup> April 7.

cupied apartment. With noiseless foot he paces the lonely hall, half lighted by the moon ; he winds up the ascent of the stairs, and reaches the door of the chamber. Of this, he moves the lock, by soft and continued pressure, till it turns on its hinges without noise ; and he enters, and beholds his victim before him. The room is uncommonly open to the admission of light. The face of the innocent sleeper is turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple, show him where to strike. The fatal blow is given ! and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death ! It is the assassin's purpose to make sure work ; and he plies the dagger, though it is obvious that life has been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard ! To finish the picture, he explores the wrist for the pulse ! He feels for it, and ascertains that it beats no longer ! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder. No eye has seen him, no ear has heard him. The secret is his own, and it is safe !<sup>1</sup>

Ah ! Gentleman, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it, and say it is safe. Not to speak of that eye which pierces through all disguises, and beholds every thing as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Especially in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance, connected with the time and place ; a thousand ears catch every whisper ; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the

<sup>1</sup> J. J. Knapp's Confession. See pages 243, 246.

slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It is false to itself ; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him ; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed ; there is no refuge from confession but suicide, and suicide is confession.<sup>1</sup>

Much has been said, on this occasion, of the excitement which has existed, and still exists, and of the extraordinary measures taken to discover and punish the guilty.<sup>2</sup> No doubt there has been, and is, much excitement, and strange indeed it would be had it been otherwise. Should not all the peaceable and well-disposed naturally feel concerned, and naturally exert themselves to bring to punishment the authors of this secret assassination ? Was it a thing to be slept upon or forgotten ? Did you, Gentlemen, sleep quite as quietly in your beds after this murder as before ? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good, to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law ? If this be excitement, is it an unnatural or an improper excitement ?

<sup>1</sup> Crowninshield committed suicide, June 15. See page 9.

<sup>2</sup> Page 207.



It seems to me, Gentlemen, that there are appearances of another feeling, of a very different nature and character ; not very extensive, I would hope, but still there is too much evidence of its existence. Such is human nature, that some persons lose their abhorrence of crime in their admiration of its magnificent exhibitions. Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of the guilt, in admiration of the excellence of the performance, or the unequalled atrocity of the purpose. There are those in our day who have made great use of this infirmity of our nature, and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance ; and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary murder, but it is still a murder. We are not to lose ourselves in wonder at its origin, or in gazing on its cool and skilful execution. We are to detect and to punish it ; and while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offences of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder ; deliberate, concerted, malicious murder.

Although the interest of this case may have diminished by the repeated investigation of the facts ; still, the additional labor which it imposes upon all concerned is not to be regretted, if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said truly, that it is your individual duty to judge the prisoner ; that it is your individual duty to determine his guilt or innocence ; and that you are to weigh the testimony with candor and fairness. But much at the same time has been said,<sup>1</sup> which, although it would seem

<sup>1</sup> Page 207.

to have no distinct bearing on the trial, cannot be passed over without some notice.

A tone of complaint so peculiar has been indulged, as would almost lead us to doubt whether the prisoner at the bar, or the managers of this prosecution, are now on trial. Great pains have been taken to complain of the manner of the prosecution. We hear of getting up a case; of setting in motion trains of machinery; of foul testimony; of combinations to overwhelm the prisoner; of private prosecutors; that the prisoner is hunted, persecuted, driven to his trial; that everybody is against him; and various other complaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it.

In the course of my whole life, I have never heard before so much said about the particular counsel who happen to be employed; as if it were extraordinary that other counsel than the usual officers of the government should assist in the management of a case on the part of the government. In one of the last criminal trials in this county, that of Jackman for the "Goodridge robbery" (so called), I remember that the learned head of the Suffolk Bar, Mr. Prescott, came down in aid of the officers of the government. This was regarded as neither strange nor improper. The counsel for the prisoner, in that case, contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.<sup>1</sup>

Complaint is made that rewards were offered, in this case, and temptations held out to obtain testimony. Are not rewards always offered, when great and secret offences are committed? Rewards were offered in the case to which I have alluded; and every other means taken to discover the offenders, that ingenuity or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint at the manner in which the perpetrators of this crime were detected, almost indicating that they regard it as a positive injury to them to have found out their guilt. Since no man witnessed it, since they do not now confess it,

attempts to discover it are half esteemed as officious intermeddling and impertinent inquiry.<sup>1</sup>

It is said, that here even a Committee of Vigilance was appointed.<sup>1</sup> This is a subject of reiterated remark. This committee are pointed at, as though they had been officiously intermeddling with the administration of justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still, through fear of overdoing? Is it come to this, that an effort cannot be made, a hand cannot be lifted, to discover the guilty, without its being said there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly, a community that would not be roused to action upon an occasion such as this was, a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all the means of discovery and detection, must indeed be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavored to persuade you, that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone; but that even the legislature have caught this spirit; that through the procurement of the gentleman here styled private prosecutor, who is a member of the Senate, a special session of this court was appointed for the trial of these offenders; that the ordinary movements of the wheels of justice were too slow for the purposes devised. But does not everybody see and know, that it was matter of absolute necessity to have a special session of the court? When or how could the prisoners have been tried without a special session? In the ordinary arrangement of the courts, but one week in a year is allotted for the whole court to sit in this county. In the trial of all capital offences a majority of the court, at least, is required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on

this subject to say, that the law was drawn by the late Chief Justice himself,<sup>1</sup> to enable the court to accomplish its duties, and to afford the persons accused an opportunity for trial without delay.

Again, it is said that it was not thought of making Francis Knapp, the prisoner at the bar, a PRINCIPAL till after the death of Richard Crowninshield, Jr.; that the present indictment is an after-thought; that "testimony was got up" for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the grand jury. The officers of the government did not know what the testimony would be against them. They could not, therefore, have determined what course they should pursue. They intended to arraign all as principals who should appear to have been principals, and all as accessories who should appear to have been accessories. All this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself, than even for their client.<sup>2</sup> Your decision in this case, they say, will stand as a precedent. Gentlemen, we hope it will. We hope it will be a precedent both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth when found.

It is said, that "laws are made, not for the punishment of the guilty, but for the protection of the innocent." This is not quite accurate, perhaps, but if so, we hope they will be so administered as to give that protection. But who are the innocent whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who, having lived in the fear of God through the day, wish to sleep in his peace through the night, in their own beds. The law is established that those who live quietly may sleep quietly; that they who do no harm may feel none. The gentleman can think of none

<sup>1</sup> Chief Justice Parker. See page 51.

<sup>2</sup> Page 101.



that are innocent except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder innocent? Are the Crowninshields and the Knapps innocent? What is innocence? How deep stained with blood, how reckless in crime, how deep in depravity may it be, and yet retain innocence? The law is made, if we would speak with entire accuracy, to protect the innocent by punishing the guilty. But there are those innocent out of a court, as well as in; innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded in a principle of vengeance. It does not punish that it may inflict suffering. The humanity of the law feels and regrets every pain it causes, every hour of restraint it imposes, and more deeply still every life it forfeits. But it uses evil as the means of preventing greater evil. It seeks to deter from crime by the example of punishment. This is its true, and only true main object. It restrains the liberty of the few offenders, that the many who do not offend may enjoy their liberty. It takes the life of the murderer, that other murders may not be committed. The law might open the jails, and at once set free all persons accused of offences, and it ought to do so if it could be made certain that no other offences would hereafter be committed; because it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has so far failed of its purpose; the safety of the innocent is so far endangered. Every unpunished murder takes away something from the security of every man's life. Whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why, then, all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case.<sup>1</sup> Do they mean to deny the conspiracy? Do they mean to deny that the two Crownin-

shields and the two Knapps were conspirators? Why do they rail against Palmer, while they do not disprove, and hardly dispute, the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality that Palmer has been prevailed upon to betray his bosom companions and to violate the sanctity of friendship. Again I ask, Why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Captain White is dead? One would have almost supposed even that, from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why do they not come to the fact? Here the defense is wholly indistinct. The counsel neither take the ground, nor abandon it.<sup>1</sup> They neither fly, nor light. They hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out their strength in complaining of the *manner* in which the deed is discovered, of the extraordinary pains taken to bring the prisoner's guilt to light, would it not be better to show there was no guilt? Would it not be better to show his innocence? They say, and they complain, that the community feel a great desire that he should be punished for his crimes. Would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case.<sup>2</sup> Your first inquiry, on the evidence, will be, Was Captain White murdered in pursuance of a conspiracy, and was the defendant one of this conspiracy? If so, the second inquiry is, Was he so connected with the murder itself as that he is liable to be convicted as a *principal*? The defendant is indicted as a *principal*.<sup>3</sup> If not guilty *as such*, you cannot convict him. The indictment contains three distinct classes of counts. In the first, he is charged as having done the deed with his own hand; in the second, as an

<sup>1</sup> Page 28.<sup>2</sup> Page 34.<sup>3</sup> Pages 14, 194.

aider and abettor to Richard Crowninshield, Jr., who did the deed ; in the third, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him.

It may be proper to say, as a preliminary remark, that there are two extraordinary circumstances attending this trial. One is, that Richard Crowninshield, Jr., the supposed immediate perpetrator of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is, that Joseph Knapp, the supposed originator and planner of the murder, having once made a full disclosure of the facts, under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself, when the time shall come for his trial. These circumstances it is fit you should remember, in your investigation of the case.

Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform, and serves to remind you of the care and wisdom necessary to be exercised in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes any thing to be strained, or too far pressed against the prisoner. Still, it is fit you should see the full importance of the duty which devolves upon you.

And now, Gentlemen, in examining this evidence, let us begin at the beginning, and see first what we know independent of the disputed testimony. This is a case of circumstantial evidence.<sup>1</sup> And these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common that offenses of this kind must be proved in this way. Midnight assassins take no witnesses. The evidence of the

facts relied on has been somewhat sneeringly denominated, by the learned counsel, "circumstantial stuff," but it is not such stuff as dreams are made of. Why does he not rend this stuff? Why does he not scatter it to the winds? He dismisses it a little too summarily. It shall be my business to examine this stuff, and try its cohesion.

The letter from Palmer at Belfast, is that no more than flimsy stuff?

The fabricated letters from Knapp to the committee and to Mr. White, are they nothing but stuff?

The circumstance, that the house-keeper was away at the time the murder was committed, as it was agreed she would be, is that, too, a useless piece of the same stuff?

The facts, that the key of the chamber door was taken out and secreted; that the window was unbarred and unbolted; are these to be so slightly and so easily disposed of?

It is necessary, Gentleman, to settle now, at the commencement, the great question of a conspiracy. If there was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy, and he is proved to have been a party, then these two facts have a strong bearing on others, and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, either to admit or to deny. They choose to confine themselves to a hypothetical mode of speech.<sup>1</sup> They say, supposing there was a conspiracy, *non sequitur*<sup>2</sup> that the prisoner is guilty as principal. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence which goes to charge him with the execution of that plan.

We mean to make out the conspiracy; and that the defendant was a party to it; and then to draw all just inferences from these facts.

Let me ask your attention, then, in the first place, to those appearances, on the morning after the murder, which have a tendency to show that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found

<sup>1</sup> Page 91.

<sup>2</sup> Page 143.



murdered in his bed. No stranger had done the deed, no one unacquainted with the house had done it. It was apparent that somebody within had opened, and that somebody without had entered. There had obviously and certainly been concert and co-operation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered without any riot or any violence. He had found the way prepared before him. The house had been previously opened. The window was unbarred from within, and its fastening unscrewed. There was a lock on the door of the chamber in which Mr. White slept, but the key was gone. It had been taken away and secreted. The footsteps of the murderer were visible, out-doors, tending toward the window. The plank by which he entered the window still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Every thing indicated that somebody within had co-operated with somebody without. Every thing proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder.<sup>1</sup> On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted murder; that there had been a conspiracy to commit it. Who, then, were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery.

If the Knapps and the Crowninshields were not the conspirators in this murder, then there is a whole set of conspirators not yet discovered.<sup>2</sup> Because, independent of the testimony of Palmer and Leighton, independent of all disputed evidence, we know, from uncontroverted facts, that this murder was, and must have been, the result of concert and co-operation between two or more. We know it was not done without plan and deliberation; we see, that whoever entered the house, to strike the blow, was favored and aided by some one who had been previously in the house, without suspicion, and who had prepared the way. This is concert, this is co-operation, this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a

<sup>1</sup> Pages 61, 173.

<sup>2</sup> Page 81.

motive<sup>1</sup> to desire the death of Mr. White, and that motive has been shown.

He was connected by marriage with the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased was more than eighty years old, and had no children. His only heirs were nephews and nieces. He was supposed to be possessed of a very large fortune, which would have descended, by law, to his several nephews and nieces in equal shares ; or, if there was a will, then according to the will. But as he had but two branches of heirs, the children of his brother, Henry White, and of Mrs. Beckford, each of these branches, according to the common idea, would have shared one half of his property.

This popular idea is not legally correct. But it is common, and very probably was entertained by the parties. According to this idea, Mrs. Beckford, on Mr. White's death without a will, would have been entitled to one half of his ample fortune ; and Joseph Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others ; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other to the Beckford family. So that, by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up, or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished the murder, that will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed at the time impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key which unlocks the whole mystery is the knowledge of the intention of the conspirators to steal the will. This is derived from Palmer, and it explains all. It solves the whole marvel. It shows the motive which actuated those, against whom there is much evidence, but

<sup>1</sup> Page 124.

who, without the knowledge of this intention, were not seen to have had a motive. This intention is proved, as I have said, by Palmer ; and it is so congruous with all the rest of the case, it agrees so well with all facts and circumstances, that no man could well withhold his belief, though the facts were stated by a still less credible witness.<sup>1</sup> If one desirous of opening a lock turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found *the* key of *that* lock.<sup>2</sup> So, in explaining circumstances of evidence which are apparently irreconcilable or unaccountable, if a fact be suggested which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If it were false, his ingenuity could not furnish us such clear exposition of strange appearing circumstances. Some truth not before known can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the will.<sup>3</sup> They, and they alone, would be supposed or seem to have a direct object for wishing Mr. White's life to be terminated. And, strange as it may seem, we find counsel now insisting, that, if no apology, it is yet mitigation of the atrocity of the Knapps' conduct in attempting to charge this foul murder on Mr. White, the nephew and principal devisee, that public suspicion was already so directed ! As if assassination of character were excusable in proportion as circumstances may render it easy. Their endeavors, when they knew they were suspected themselves, to fix the charge on others, by foul means and by falsehood, are fair and strong proof of their own guilt. But more of that hereafter.

The counsel say that they might safely admit that Richard Crowninshield, Jr. was the perpetrator of this murder.

But how could they safely admit that ?<sup>4</sup> If that were admitted, everything else would follow. For why should Richard Crowninshield, Jr. kill Mr. White ? He was not his heir, nor

<sup>1</sup> Page 59.

<sup>2</sup> Page 153.

<sup>3</sup> Page 124.

<sup>4</sup> Page 206.



his devisee ; nor was he his enemy. What could be his motive ?<sup>1</sup> If Richard Crowninshield, Jr. killed Mr. White, he did it at some one's procurement who himself had a motive. And who, having any motive, is shown to have had any intercourse with Richard Crowninshield, Jr., but Joseph Knapp, and this principally through the agency of the prisoner at the bar ? It is the infirmity, the distressing difficulty of the prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove, and what all must believe. He who believes, on this evidence, that Richard Crowninshield, Jr. was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel, therefore, are wrong, I think, in saying they might safely admit this. The admission of so important and so connected a fact would render it impossible to contend further against the proof of the entire conspiracy, as we state it.<sup>3</sup>

What, then, was this conspiracy ? J. J. Knapp, Jr., desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who, with the aid of other ruffians, was to enter the house, and murder him in his bed.

As far back as January this conspiracy began. Endicott testifies<sup>2</sup> to a conversation with J. J. Knapp at that time, in which Knapp told him that Captain White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said, "Black and white don't lie." When asked if the will was not locked up, he said, "There is such a thing as two keys to the same lock." And speaking of the then late illness of Captain White, he said, that Stephen White would not have been sent for if *he* had been there.<sup>3</sup>

Hence it appears, that as early as January Knapp had a knowledge of the will, and that he had access to it by means of false keys. This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony, a fact disclosed to him by the other conspirators. He says that he was informed of this by the Crowninshields on the 2d of April. But then it is said, that Palmer is not to be credited ; that by

<sup>1</sup> Page 138.<sup>2</sup> Pages 44, 62.<sup>3</sup> Page 55.



his own confession he is a felon ; that he has been in the State prison in Maine ; and, above all, that he was intimately associated with these conspirators themselves. Let us admit these facts. Let us admit him to be as bad as they would represent him to be ; still, in law, he is a competent witness. How else are the secret designs of the wicked to be proved, but by their wicked companions, to whom they have disclosed them ? The government does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant of the prisoners. The fact, however, does not depend on his testimony alone. It is corroborated by other proof ; and, taken in connection with the other circumstances, it has strong probability.<sup>1</sup> In regard to the testimony of Palmer, generally, it may be said that it is less contradicted, in all parts of it, either by himself or others, than that of any other material witness, and that everything he has told is corroborated by other evidence, so far as it is susceptible of confirmation. An attempt has been made to impair his testimony, as to his being at the Halfway House on the night of the murder ; you have seen with what success. Mr. Babb is called to contradict him.<sup>2</sup> You have seen how little he knows, and even that not certainly ; for he himself is proved to have been in an error by supposing Palmer to have been at the Halfway House on the evening of the 9th of April. At that time he is proved to have been at Dustin's in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth, there is no reason why it should not be believed. Truth is truth, come whence it may.

The facts show that this murder had been long in agitation ; that it was not a new proposition on the 2d of April ; that it had been contemplated for five or six weeks. Richard Crowninshield was at Wenham in the latter part of March, as testified by Starrett. Frank Knapp was at Danvers in the latter part of February, as testified by Allen. Richard Crowninshield inquired whether Captain Knapp was about home, when at Wenham. The probability is, that they would open the case to Palmer as a new project. There are other circumstances

<sup>1</sup> Pages 54, 59.

<sup>2</sup> Page 67.

that show it to have been some weeks in agitation. Palmer's testimony as to the transaction on the 2d of April is corroborated by Allen, and by Osborn's books. He says that Frank Knapp came there in the afternoon, and again in the evening. So the book shows. He says that Captain White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless Frank Knapp had brought the knowledge? And was it not the special object of this visit to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer, written at Belfast, bears intrinsic marks of genuineness. It was mailed at Belfast, May 13th. It states facts that he could not have known, unless his testimony be true. This letter was not an after-thought; it is a genuine narrative. In fact, it says, "I know the business your brother Frank was transacting on the 2d of April." How could he have possibly known this, unless he had been there? The "one thousand dollars that was to be paid,"—where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts, are to be taken together; and they most clearly show that the death of Captain White was caused by somebody interested in putting an end to his life.<sup>1</sup>

As to the testimony of Leighton, as far as manner of testifying goes, he is a bad witness; but it does not follow from this that he is not to be believed. There are some strange things about him. It is strange, that he should make up a story against Captain Knapp, the person with whom he lived; that he never voluntarily told any thing: all that he has said was screwed out of him.<sup>2</sup> But the story could not have been invented by him; his character for truth is unimpeached; and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony, though he gives a poor account of withholding it. He says that he was extremely *bothered* by those who questioned him. In the main story that he relates, he is entirely consistent with himself. Some things

<sup>1</sup> Page 183.<sup>2</sup> Page 53.

are for him, and some against him. Examine the intrinsic probability of what he says.<sup>1</sup> See if some allowance is not to be made for him, on account of his ignorance of things of this kind. It is said to be extraordinary, that he should have heard just so much of the conversation, and no more ; that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary ; still, this does not prove it untrue. It is extraordinary that you twelve gentlemen should be called upon, out of all the men in the county, to decide this case ; no one could have foretold this three weeks since. It is extraordinary that the first clew to this conspiracy should have been derived from information given by the father of the prisoner at bar. And in every case that comes to trial there are many things extraordinary. The murder itself is a most extraordinary one ; but still we do not doubt its reality.

It is argued, that this conversation between Joseph and Frank could not have been as Leighton has testified, because they had been together for several hours before ; this subject must have been uppermost in their minds, whereas this appears to have been the commencement of their conversation upon it.<sup>2</sup> Now this depends altogether upon the tone and manner of the expression ; upon the particular word in the sentence which was emphatically spoken. If he had said, "When did you *see* Dick, Frank?" this would not seem to be the beginning of the conversation. With what emphasis it was uttered, it is not possible to learn ; and therefore nothing can be made of this argument. If this boy's testimony stood alone, it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clew to numerous other circumstances, which, when known, mutually confirm what would have been received with caution without such corroboration. How could Leighton have made up this conversation ? "When did you see Dick?" "I saw him this morning." "When is he going to kill the old man?" "I don't know." "Tell him, if he don't do it soon, I won't pay him." Here is a vast amount

<sup>1</sup> Pages 66, 70.<sup>2</sup> Page 207.

in few words. Had he wit enough to invent this? There is nothing so powerful as truth ; and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in the whole matter, as it would have been for this ignorant country boy to invent this story.

The acts of the parties themselves furnish strong presumption of their guilt.<sup>1</sup> What was done on the receipt of the letter from Maine? This letter was signed by Charles Grant, Jr., a person not known to either of the Knapps, nor was it known to them that any other person beside the Crowninshields knew of the conspiracy. This letter, by the accidental omission of the word Jr.,<sup>2</sup> fell into the hands of the father, when intended for the son. The father carried it to Wenham, where both the sons were. They both read it. Fix your eye steadily on this part of the *circumstantial stuff* which is in the case, and see what can be made of it. This was shown to the two brothers on Saturday, the 15th of May. Neither of them knew Palmer. And if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them how any one at Belfast could have had knowledge of this affair. Their conscious guilt prevented due circumspection. They did not see the bearing of its publication. They advised their father to carry it to the Committee of Vigilance, and it was so carried. On the Sunday following, Joseph began to think there might be something in it. Perhaps, in the mean time, he had seen one of the Crowninshields. He was apprehensive that they might be suspected ; he was anxious to turn attention from their family. What course did he adopt to effect this? He addressed one letter, with a false name, to Mr. White, and another to the Committee ; and to complete the climax of his folly, he signed the letter addressed to the Committee, "Grant," the same name as that which was signed to the letter received from Belfast. It was in the knowledge of the Committee, that no person but the Knapps had seen this letter from Belfast ; and that no other person knew its signature. It therefore must have been irresistibly plain to them

<sup>1</sup> Pages 27, 34.

<sup>2</sup> Page 179.



that one of the Knapps was the writer of the letter received by the Committee, charging the murder on Mr. White. Add to this the fact of its having been dated at Lynn, and mailed at Salem four days after it was dated, and who could doubt respecting it? Have you ever known or read of folly equal to this? Can you conceive of crime more odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions against a man, whom, if they were innocent, they had no reason to believe guilty; and whom, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the Committee has intrinsic marks of a knowledge of this transaction. It tells the *time* and the *manner* in which the murder was committed. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself.<sup>1</sup>

Joseph Knapp requested Allen to put these letters into the post-office, because, said he, "I wish to nip this silly affair in the bud." If this were not the order of an overruling Providence, I should say that it was the silliest piece of folly that was ever practised. Mark the destiny of crime. It is ever obliged to resort to such subterfuges; it trembles in the broad light; it betrays itself in seeking concealment. He alone walks safely who walks uprightly. Who for a moment can read these letters and doubt of Joseph Knapp's guilt? The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike-road broad enough or smooth enough for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out to fix his guilt. In attempting to charge another with his own crime, he writes his own confession. To do away the effect of Palmer's letter, signed Grant, he writes a letter himself and affixes to it the name of Grant. He writes in a disguised hand; but how could it happen that the same Grant should be in Salem that was at Belfast? This has brought the whole thing out. Evi-

<sup>1</sup> Page 179.

dently he did it, because he has adopted the same style. Evidently he did it, because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields, on the 9th of April. George then asked him whether he had heard of the murder. Richard inquired whether he had heard the music at Salem. They said that they were suspected, that a committee had been appointed to search houses ; and that they had melted up the dagger, the day after the murder, because it would be a suspicious circumstance to have it found in their possession. Now this committee was not appointed, in fact, until Friday evening. But this proves nothing against Palmer ; it does not prove that George did not tell him so ; it only proves that he gave a false reason for a fact. They had heard that they were suspected ; how could they have heard this, unless it were from the whisperings of their own consciences ? Surely this rumor was not then public.

About the 27th of April, another attempt was made by the Knapps to give a direction to public suspicion. They reported themselves to have been robbed, in passing from Salem to Wenham, near Wenham Pond. They came to Salem and stated the particulars of the adventure. They described persons, their dress, size, and appearance, who had been suspected of the murder. They would have it understood that the community was infested by a band of ruffians, and that they themselves were the particular objects of their vengeance. Now this turns out to be all fictitious, all false. Can you conceive of any thing more enormous, any wickedness greater, than the circulation of such reports ? than the allegation of crimes, if committed, capital ? If no such crime had been committed, then it reacts with double force upon themselves, and goes very far to show their guilt. How did they conduct themselves on this occasion ? Did they make hue and cry ? Did they give information that they had been assaulted that night at Wenham ? No such thing. They rested quietly that night ; they waited to be called on for the particulars of their adventure ; they made no attempt to arrest the offenders ;

this was not their object. They were content to fill the thousand mouths of rumor, to spread abroad false reports, to divert the attention of the public from themselves ; for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid is a circumstance worthy of consideration. By examining the facts and dates, it will satisfactorily appear that Joseph Knapp paid a sum of money to Richard Crowninshield, in five-franc pieces, on the 24th of April.<sup>1</sup> On the 21st of April, Joseph Knapp received five hundred five-franc pieces, as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel was deposited in a bank at Salem. On Saturday, the 24th of April, Frank and Richard rode to Wenham. They were there with Joseph an hour or more, and appeared to be negotiating private business. Richard continued in the chaise ; Joseph came to the chaise and conversed with him. These facts are proved by Hart and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved, by Lummus, to have been at Wenham, with another person whose appearance corresponds with Frank's. Can any one doubt this being the same evening ? What had Richard Crowninshield to do at Wenham, with Joseph, unless it were this business ? He was there before the murder ; he was there after the murder ; he was there clandestinely, unwilling to be seen. If it were not upon this business, let it be told what it was for. Joseph Knapp could explain it ; Frank Knapp might explain it. But they do not explain it ; and the inference is against them.

Immediately after this, Richard passes five-franc pieces ; on the same evening, one to Lummus, five to Palmer ; and near this time George passes three or four in Salem. Here are nine of these pieces passed by them in four days ; this is extraordinary. It is an unusual currency ; in ordinary business, few men would pass nine such pieces in the course of a year. If they were not received in this way, why not explain how they came by them ? Money was not so flush in their pockets that

<sup>1</sup> J. J. Knapp's Confession.

they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant, does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard of Palmer's being arrested and committed to prison; the various efforts he makes to discover the fact; the lowering, through the crevices of the rock, the pencil and paper for him to write upon; the sending two lines of poetry, with the request that he would return the corresponding lines; the shrill and peculiar whistle; the inimitable exclamations of "Palmer! Palmer! Palmer!" All these things prove how great was his alarm; they corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter. He must have opened the window, and secreted the key; he had free access to every part of the house; he was accustomed to visit there; he went in and out at his pleasure; he could do this without being suspected. He is proved to have been there the Saturday preceding.

If all these things, taken in connection, do not prove that Captain White was murdered in pursuance of a conspiracy, then the case is at an end.

Savary's testimony is wholly unexpected.<sup>1</sup> He was called for a different purpose. When asked who the person was that he saw come out of Captain White's yard between three and four o'clock in the morning, he answered, Frank Knapp. It is not clear that this is not true. There may be many circumstances of importance connected with this, though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about eleven o'clock; it states it to have been done with a blow on the head, from a weapon loaded with lead. Here is too great a correspondence with the reality not to have some meaning in it. Dr. Pierson was always of the opinion, that the two classes of wounds were made with different instru-



ments, and by different hands. It is possible that one class was inflicted at one time, and the other at another. It is possible that on the last visit the pulse might not have entirely ceased to beat, and then the finishing stroke was given. It is said, that, when the body was discovered, some of the wounds wept, while the others did not.<sup>1</sup> They may have been inflicted from mere wantonness. It was known that Captain White was accustomed to keep specie by him in his chamber; this perhaps may explain the last visit. It is proved, that this defendant was in the habit of retiring to bed, and leaving it afterwards, without the knowledge of his family; perhaps he did so on this occasion. We see no reason to doubt the fact; and it does not shake our belief that the murder was committed early in the night.

What are the probabilities<sup>2</sup> as to the time of the murder? Mr. White was an aged man; he usually retired to bed at about half-past nine. He slept soundest in the early part of the night; usually awoke in the middle and latter part; and his habits were perfectly well known. When would persons, with a knowledge of these facts, be most likely to approach him? Most certainly, in the first hour of his sleep. This would be the safest time. If seen then going to or from the house, the appearance would be least suspicious. The earlier hour would then have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence which tends to prove that there was a conspiracy, and that the prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible, from such a source. Palmer is contradicted in nothing, either by any other witness, or any proved circumstance or occurrence. Whatever could be expected to support him does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with Joseph Knapp; that defendant became a party to it, and was one of its conductors, from first to last. One of the most powerful circumstances is Palmer's letter from

<sup>1</sup> Page 59.

<sup>2</sup> Page 124.

Belfast. The amount of this is a direct charge on the Knapps of the authorship of this murder. How did they treat this charge; like honest men, or like guilty men? We have seen how it was treated. Joseph Knapp fabricated letters, charging another person, and caused them to be put into the post-office.<sup>1</sup>

I shall now proceed on the supposition, that it is proved that there was a conspiracy to murder Mr. White, and that the prisoner was party to it.

The second and the material inquiry is, Was the prisoner present at the murder, aiding and abetting therein?

This leads to the legal question in the case. What does the law mean, when it says, that, in order to charge him as a principal, "he must be present aiding and abetting in the murder"? <sup>2</sup>

In the language of the late Chief Justice,<sup>3</sup> "It is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator or of the victim, to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin, this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder."

"If he be at a distance co-operating." This is not a distance to be measured by feet or rods; if the intent to lend aid combine with a knowledge that the murder is to be committed, and the person so intending be so situate that he can by any possibility lend this aid in any manner, then he is present in legal contemplation. He need not lend any actual aid; to be ready to assist is assisting.

There are two sorts of murder;<sup>4</sup> the distinction between them it is of essential importance to bear in mind: 1. Murder in an affray, or upon sudden and unexpected provocation. 2. Murder secretly, with a deliberate, predetermined intention to commit the crime. Under the first class, the question usually is, whether the offense be murder or manslaughter, in the person who commits the deed. Under the second class, it

<sup>1</sup> Pages 205, 256.

<sup>2</sup> Page 29.

<sup>3</sup> Page 51.

<sup>4</sup> Page 30.

is often a question whether others than he who actually did the deed were present, aiding and assisting therein. Offences of this kind ordinarily happen when there is nobody present except those who go on the same design. If a riot should happen in the court-house, and one should kill another, this may be murder, or it may not, according to the intention with which it was done; which is always matter of fact, to be collected from the circumstances at the time. But in secret murders, premeditated and determined on, there can be no doubt of the murderous intention; there can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act. His being there is a proof of his intent to aid and abet; else, why is he there?

It has been contended,<sup>1</sup> that proof must be given that the person accused did actually afford aid, did lend a hand in the murder itself; and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose; he may have crept silently there to hear the news, or from mere curiosity to see what was going on.<sup>2</sup> Preposterous, absurd! Such an idea shocks all common sense. A man is found to be a conspirator to commit a murder; he has planned it; he has assisted in arranging the time, the place, and the means; and he is found in the place, and at the time, and yet it is suggested that he might have been there, not for co-operation and concurrence, but from curiosity! Such an argument deserves no answer. It would be difficult to give it one, in decorous terms. It is not to be taken for granted, that a man seeks to accomplish his own purposes? When he has planned a murder, and is present at its execution, is he there to forward or to thwart his own design? is he there to assist, or there to prevent? But "curiosity"! He may be there from mere "curiosity"! Curiosity to witness the success of the execution of his own plan of murder! The very walls of a court-house ought not to stand, the ploughshare should run through the ground it stands on, where such an argument could find toleration.<sup>3</sup>

<sup>1</sup> Page 206.

<sup>2</sup> This seems to have been actually the case as regards J. F. Knapp.

<sup>3</sup> And yet this argument, so absurd in Mr. Webster's opinion, was based on the exact fact.

It is not necessary that the abettor should actually lend a hand, that he should take a part in the act itself; if he be present ready to assist, that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bedchamber of the deceased, though he had been standing by when the assassin gave the blow. This is the argument we have heard to-day.<sup>1</sup>

No doubt the law is, that being ready to assist is assisting, if the party has the power to assist, in case of need. It is so stated by Foster,<sup>2</sup> who is a high authority. "If A happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoreth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behavior of his, though highly criminal, will not of itself render him either principal or accessory." "But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, though it were but a bare trespass, to which A in the case last stated had consented, and he had gone in order to give assistance, if need were, for carrying it into execution, this would have amounted to murder in him, and in every person present and joining with him." "If the fact was committed in prosecution of the original purpose which was unlawful, the whole party will be involved in the guilt of him who gave the blow. For in combinations of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike." The author, in speaking of being present, means actual presence; not actual in opposition to constructive, for the law knows no such distinction. There is but one presence, and this is the situation from which aid, or supposed aid, may be rendered. The law does not say where the person is to go, or how near he is to go, but that he must be where he may give assistance, or where the perpetrator may believe that he may be

<sup>1</sup> The court here said, they did not so understand the argument of the counsel for defendant. Mr. Dexter said, "The intent and power alone must co-operate."

<sup>2</sup> Page 51.



assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a view to render assistance, if need be ; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder.<sup>1</sup>

It is contended that the prisoner at the bar could not be a principal, he being in Brown Street, because he could not there render assistance ; and you are called upon to determine this case, according as you may be of opinion whether Brown Street was, or was not, a suitable, convenient, well-chosen place to aid in this murder.<sup>2</sup> This is not the true question. The inquiry is not whether you would have selected this place in preference to all others, or whether you would have selected it at all. If the parties chose it, why should we doubt about it ? How do we know the use they intended to make of it, or the kind of aid that he was to afford by being there ? The question for you to consider is, Did the defendant go into Brown Street in aid of this murder ? Did he go there by agreement, by appointment with the perpetrator ?<sup>3</sup> If so, everything else follows. The main thing, indeed the only thing, is to inquire whether he was in Brown Street by appointment with Richard Crowninshield. It might be to keep general watch ; to observe the lights, and advise as to time of access ; to meet the murderer on his return, to advise him as to his escape ; to examine his clothes, to see if any marks of blood were upon them ; to furnish exchange of clothes, or new disguise, if necessary ; to tell him through what streets he could safely retreat, or whether he could deposit the club in the place designed ; or it might be without any distinct object, but merely to afford that encouragement which would proceed from Richard Crowninshield's consciousness that he was near. It is of no consequence whether, in your opinion, the place was well chosen or not, to afford aid ; if it was so chosen, if it was by appointment that he was there, it is enough. Suppose Richard Crowninshield, when applied to to commit the murder, had said, " I won't do it unless there can be some one near by to

<sup>1</sup> Page 150.<sup>2</sup> Pages 101, 206.<sup>3</sup> He did not.

favor my escape ; I won't go unless you will stay in Brown Street." Upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen ; though it is apparent that the being in the place chosen was a condition, without which the murder would never have happened.

You are to consider the defendant as one in the league, in the combination to commit the murder. If he was there by appointment with the perpetrator, he is an abettor.<sup>1</sup> The concurrence of the perpetrator in his being there is proved by the previous evidence of the conspiracy. If Richard Crowninshield, for any purpose whatsoever, made it a condition of the agreement, that Frank Knapp should stand as backer, then Frank Knapp was an aider and abettor ; no matter what the aid was, or what sort it was, or degree, be it ever so little ; even if it were to judge of the hour when it was best to go, or to see when the lights were extinguished, or to give an alarm if any one approached. Who better calculated to judge of these things than the murderer himself ? and if he so determined them, that is sufficient.

Now as to the facts.<sup>2</sup> Frank Knapp knew that the murder was that night to be committed ; he was one of the conspirators, he knew the object, he knew the time. He had that day been to Wenham to see Joseph, and probably to Danvers to see Richard Crowninshield, for he kept his motions secret. He had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used ; he had intentionally left the *place* and the *price* blank on Osborn's books. He went to Wenham by the way of Danvers ; he had been told the week before to hasten Dick ; he had seen the Crowninshields several times within a few days ; he had a saddle-horse the Saturday night before ; he had seen Mrs. Beckford at Wenham, and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again. He had just come from Wenham. Every day, for the week previous, he had visited one or another of these conspirators, save Sunday, and then prob-

<sup>1</sup> Page 91.

<sup>2</sup> Page 205.

ably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house, and would naturally tell him of it; there were constant communications between them; daily and nightly visitation; too much knowledge of these parties and this transaction, to leave a particle of doubt on the mind of any one, that Frank Knapp knew the murder was to be committed this night. The hour was come, and he knew it; if so, and he was in Brown Street, without explaining why he was there, can the jury for a moment doubt whether he was there to countenance, aid, or support; or for curiosity alone; or to learn how the wages of sin and death were earned by the perpetrator? <sup>1</sup>

The perpetrator would derive courage, and strength, and confidence, from the knowledge that one of his associates was near by. If he was in Brown Street, he could have been there for no other purpose. If there for this purpose, then he was, in the language of the law, *present*, aiding and abetting in the murder.

His interest lay in being somewhere else.<sup>2</sup> If he had nothing to do with the murder, no part to act, why not stay at home? Why should he jeopard his own life, if it was not agreed that he should be there? He would not voluntarily go where the very place would cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place proves that he went to give aid. His staying away would have made an *alibi*. If he had nothing to do with the murder, he would be at home, where he could prove his *alibi*. He knew he was in danger, because he was guilty of the conspiracy, and, if he had nothing to do, would not expose himself to suspicion or detection.

Did the prisoner at the bar countenance this murder? Did he concur, or did he non-concur, in what the perpetrator was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer

<sup>1</sup> Here Mr. Webster read the law from Hawkins. 1 Hawk. 204, Lib. 1, ch. 32, sec. 7. See page 51.

<sup>2</sup> Page 124.

these questions, so you should answer the general question, whether he was there consenting to the murder, or whether he was there as a spectator only.

One word more on this presence, called constructive presence.<sup>1</sup> What aid is to be rendered? Where is the line to be drawn, between acting, and omitting to act? Suppose he had been in the house, suppose he had followed the perpetrator to the chamber, what could he have done? This was to be a murder by stealth; it was to be a secret assassination. It was not their purpose to have an open combat; they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor; because of his presence, and ability to render services, if needed. What service could he have rendered, if there? Could he have helped him to fly? Could he have aided the silence of his movements? Could he have facilitated his retreat, on the first alarm? Surely, this was a case where there was more of safety in going alone than with another; where company would only embarrass. Richard Crowninshield would prefer to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be encumbered by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown Street. But whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in *actual presence* is aiding in *constructive presence*; any thing that is aid in one case is aid in the other.<sup>2</sup>

If, then, the aid be anywhere, so as to embolden the perpetrator, to afford him hope or confidence in his enterprise, it is the same as though the person stood at his elbow with his sword drawn. His being there ready to act, with the power to act, is what makes him an abettor.<sup>3</sup>

<sup>1</sup> Page 29.      <sup>2</sup> 4 Hawk. 201, Lib. 4, ch. 29, sec. 8, page 52.

<sup>3</sup> Here Mr. Webster referred to the cases of Kelly, of Hyde, and others, cited by counsel for the defendant, and showed that they did not militate with the doctrine for which he contended. The difference is, in those cases there was open violence; this was a case of secret assassination.



What are the *facts* in relation to this presence? Frank Knapp is proved to have been a conspirator, proved to have known that the deed was now to be done. Is it not probable that he was in Brown Street to concur in the murder?<sup>1</sup> There were four conspirators. It was natural that some one of them should go with the perpetrator. Richard Crowninshield was to be the perpetrator; he was to give the blow. There is no evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits, he was accustomed to the use of sword-canes and dirks. If any aid was required, he was the man to give it. At least, there is no evidence to the contrary of this.

Aid could not have been received from Joseph Knapp, or from George Crowninshield.<sup>2</sup> Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was; that he was in other company, such as it was, until eleven o'clock. This narrows the inquiry. This demands of the prisoner to show, if he was not in this place, where he was.<sup>3</sup> It calls on him loudly to show this, and to show it truly. If he could show it, he would do it. If he does not tell, and that truly, it is against him. The defence of an *alibi* is a double-edged sword. He knew that he was in a situation where he might be called upon to account for himself. If he had had no particular appointment or business to attend to, he would have taken care to be able so to account. He would have been out of town, or in some good company. Has he accounted for himself on that night to your satisfaction?

The prisoner has attempted to prove an *alibi* in two ways. In the first place, by four young men with whom he says he was in company, on the evening of the murder, from seven o'clock till near ten o'clock. This depends upon the certainty of the night. In the second place, by his family, from ten o'clock afterwards. This depends upon the certainty of the time of the night. These two classes of proof have no con-

The aid must meet the occasion. Here no *acting* was necessary, but watching, concealment of escape, management. See page 155.

<sup>1</sup> Page 124.

<sup>2</sup> Page 82.

<sup>3</sup> Page 39.

nection with each other. One may be true, and the other false ; or they may both be true, or both be false. I shall examine this testimony with some attention, because, on a former trial, it made more impression on the minds of the court than on my own mind. I think, when carefully sifted and compared, it will be found to have in it more of plausibility than reality.

Mr. Page testifies, that on the evening of the 6th of April he was in company with Burchmore, Balch, and Forrester, and that he met the defendant about seven o'clock, near the Salem Hotel ; that he afterwards met him at Remonds, about nine o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a member of college, and says that he came to town the Saturday evening previous ; that he is now able to say that it was the night of the murder when he walked with Frank Knapp, from the recollection of the fact, that he called himself to an account, on the morning after the murder, as it is natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory ; <sup>1</sup> general impressions as to time are not to be relied on. If I were called on to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give an account of himself for any *other* day in the month of April. They are made to remember the fact, and then they think they remember the time. The witness has no means of knowing it was Tuesday rather than any other time. He did not know it at first ; he could not know it afterwards. He says he called himself to an account. This has no more to do with the murder than with the man in the moon. Such testimony is not worthy to be relied on in any forty-shilling cause. What occasion had he to call himself to an account ? Did he suppose that he should be suspected ? Had he any intimation of this conspiracy ?

Suppose, Gentlemen, you were either of you asked where you were, or what you were doing, on the fifteenth day of June ; you could not answer this question without calling to mind some events to make it certain. Just as well may you remember on

what you dined each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by the understanding. The flow of time is known only by something which marks it; and he who speaks of the date of occurrences with nothing to guide his recollection speaks at random, and is not to be relied on. This young gentleman remembers the facts and occurrences; he knows nothing why they should not have happened on the evening of the 6th; but he knows no more. All the rest is evidently conjecture or impression.

Mr. White informs you, that he told him he could not tell what night it was. The first thoughts are all that are valuable in such case. They miss the mark by taking second aim.

Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is, that it was some evening before Fast-day. But whether Monday, Tuesday, or Saturday, he cannot tell.<sup>1</sup>

Mr. Burchmore says, to the best of his belief, it was the evening of the murder. Afterwards he attempts to speak positively, from recollecting that he mentioned the circumstance to William Peirce, as he went to the Mineral Spring on Fast-day. Last Monday morning he told Colonel Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said with any belief in the accuracy of his recollections.

Mr. Forrester does not speak with any certainty as to the night; and it is very certain that he told Mr. Loring and others, that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance by which they approximate to an identifying of the night is, that three of them say it was cloudy; they think their walk was either on Monday or Tuesday evening, and it is admitted that Monday evening was

<sup>1</sup> See qualities of witnesses, pages 44-47.

clear, whence they draw the inference that it must have been Tuesday.

But, fortunately, there is one *fact* disclosed in their testimony that settles the question.<sup>1</sup> Balch says, that on the evening, whenever it was, he saw the prisoner; the prisoner told him he was going out of town on horseback, for a distance of about twenty minutes' drive, and that he was going to get a horse at Osborn's. This was about seven o'clock. At about nine, Balch says he saw the prisoner again, and was then told by him that he had had his ride, and had returned. Now it appears by Osborn's books, that the prisoner had a saddle-horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time about which these young men testify, and is a complete answer and refutation of the attempted *alibi* on Tuesday evening.<sup>2</sup>

I come now to speak of the testimony adduced by the defendant to explain where he was after ten o'clock on the night of the murder. This comes chiefly from members of the family; from his father and brothers.

It is agreed that the affidavit of the prisoner should be received as evidence of what his brother, Samuel H. Knapp, would testify if present. Samuel H. Knapp says, that, about ten minutes past ten o'clock, his brother, Frank Knapp, on his way to bed, opened his chamber door, made some remarks, closed the door, and went to his chamber; and that he did not hear him leave it afterwards. How is this witness able to fix the time at ten minutes past ten? There is no circumstance mentioned by which he fixes it. He had been in bed, probably asleep, and was aroused from his sleep by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten, or ten minutes before eleven, when his brother spoke to him? What would be the natural result in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him, on the 8th of June, "that he did

<sup>1</sup> Pages 59, 178.

<sup>2</sup> Page 206.



not know what time his brother Frank came home, and that he was not at home when *he* went to bed." You will consider this testimony of Mr. Webb as indorsed upon this affidavit; and with this indorsement upon it, you will give it its due weight. This statement was made to him after Frank was arrested.<sup>1</sup>

I come to the testimony of the father.<sup>2</sup> I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I apprehend, in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am unable to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock. He thinks, or seems to think, that his son came in at about five minutes past ten. He fancies that he remembers his conversation; he thinks he spoke of bolting the door; he thinks he asked the time of night; he seems to remember his then going to his bed. Alas! these are but the swimming fancies of an agitated and distressed mind. Alas! they are but the dreams of hope, its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things.

Mr. Shepard says that the first conversation he had with Mr. Knapp was soon after the murder, and *before* the arrest of his sons. Mr. Knapp says it was *after* the arrest of his sons.<sup>3</sup> His own fears led him to say to Mr. Shepard, that his "son Frank was at home that night; and so Phippen told him," or "as Phippen told him." Mr. Shepard says that he was struck with the remark at the time; that it made an unfavorable impression on his mind; he does not tell you what that impression was, but when you connect it with the previous inquiry he had made, whether Frank had continued to associate with the Crowninshields, and recollect that the Crowninshields were then known to be suspected of this crime, can you doubt what

<sup>1</sup> Pages 67, 182.<sup>2</sup> Pages 48, 218.<sup>3</sup> Page 67.

this impression was ? can you doubt as to the fears he then had.

This poor old man tells you, that he was greatly perplexed at the time ; that he found himself in embarrassed circumstances ; that on this very night he was engaged in making an assignment of his property to his friend, Mr. Shepard. If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition.

The same general remarks may be applied to his conversation with Mr. Treadwell, as have been made upon that with Mr. Shepard. He told him, that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He now tells you positively that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords.<sup>1</sup>

This idea of an *alibi* is of recent origin. Would Samuel Knapp have gone to sea if it were then thought of ? His testimony, if true, was too important to be lost. If there be any truth in this part of the *alibi*, it is so near in point of time that it cannot be relied on. The mere variation of half an hour would avoid it. The mere variations of different timepieces would explain it.<sup>2</sup>

Has the defendant proved where he was on that night ? If you doubt about it, there is an end of it. The burden is upon him to satisfy you beyond all reasonable doubt.<sup>3</sup> Osborn's books, in connection with what the young men state, are conclusive, I think, on this point. He has not, then, accounted for himself ; he has attempted it, and has failed.<sup>4</sup> I pray you to remember, Gentlemen, that this is a case in which the prisoner would, more than any other, be rationally able to account for himself on the night of the murder, if he could do so. He was in the conspiracy, he knew the murder was then to be committed, and if he himself was to have no hand in its actual execution, he would of course, as a matter of safety and precaution, be somewhere else, and be able to prove afterwards

<sup>1</sup> Page 67.

<sup>2</sup> Page 179.

<sup>3</sup> Page 34.

<sup>4</sup> Page 58.

that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, Gentlemen, let us now consider what is the evidence produced on the part of the government to prove that John Francis Knapp, the prisoner at the bar, was in Brown Street on the night of the murder. This is a point of vital importance in this cause. Unless this be made out, beyond reasonable doubt, the law of *presence* does not apply to the case. The government undertakes to prove that he was present aiding in the murder, by proving that he was in Brown Street for this purpose. Now, what are the undoubted facts? They are, that two persons were seen in that street, several times during that evening, under suspicious circumstances; under such circumstances as induced those who saw them to watch their movements. Of this there can be no doubt. Mirick saw a man standing at the post opposite his store from fifteen minutes before nine until twenty minutes after, dressed in a full frock-coat, glazed cap, and so forth, in size and general appearance answering to the prisoner at the bar. This person was waiting there; and whenever any one approached him, he moved to and from the corner, as though he would avoid being suspected or recognized. Afterwards, two persons were seen by Webster, walking in Howard Street, with a slow, deliberate movement that attracted his attention. This was about half-past nine. One of these he took to be the prisoner at the bar, the other he did not know.

About half-past ten a person is seen sitting on the rope-walk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after, two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time; then to separate, and run off with great speed. Now, on this same night a gentleman is slain, murdered in his bed, his house being entered by stealth from without; and his house situated within three hundred feet of this street. The windows of his chamber were in plain sight from this street; a weapon of death is afterwards

found in a place where these persons were seen to pass, in a retired place, around which they had been seen lingering. It is now known that this murder was committed by four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown Street and its neighborhood were. Now, I ask, Gentlemen, whether you or any man can doubt that this murder was committed by the persons who were thus in and about Brown Street. Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown Street? There was something extraordinary about them; something noticeable, and noticed at the time; something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity.

Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible that they were the murderers.<sup>1</sup> Let it be remembered, that it is already shown that this murder was the result of conspiracy and of concert; let it be remembered, that the house, having been opened from within, was entered by stealth from without. Let it be remembered that Brown Street, where these persons were repeatedly seen under such suspicious circumstances, was a place from which every occupied room in Mr. White's house is clearly seen; let it be remembered, that the place, though thus very near to Mr. White's house, is a retired and lonely place; and let it be remembered that the instrument of death was afterwards found concealed very near the same spot.

Must not every man come to the conclusion, that these persons thus seen in Brown Street were the murderers? Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common sense. It is a point on which each one of you may reason like a Hale or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking, at that hour, in



Brown Street ; and their lurking in Brown Street shows who committed the murder.

If, then, the persons in and about Brown Street were the plotters and executors of the murder of Captain White, we know who they were, and you know that *there* is one of them.

This fearful concatenation of circumstances puts him to an account.<sup>1</sup> He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within three minutes' walk of the place. He must account for himself. He has attempted this, and failed. Then, with all these general reasons to show he was actually in Brown Street, and his failures in his *alibi*, let us see what is the direct proof of his being there.<sup>2</sup> But first, let me ask, is it not very remarkable that there is no attempt to show where Richard Crowninshield, Jr. was on that night ? We hear nothing of him. He was seen in none of his usual haunts about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town somewhere. Can you, therefore, entertain a doubt that he was one of the persons seen in Brown Street ? And as to the prisoner, you will recollect, that, since the testimony of the young men has failed to show where he was on that evening, the last we hear or know of him, on the day preceding the murder, is, that at four o'clock, P.M., he was at his brothers in Wenham. He had left home, after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him after four o'clock, P.M., for the remainder of the day and evening ; as he was one of the conspirators ; as Richard Crowninshield, Jr. was another ; as Richard Crowninshield, Jr. was in town in the evening, and yet seen in no usual place of resort, — the inference is very fair, that Richard Crowninshield, Jr. and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp, Jr. was at Wenham, and George Crowninshield has been accounted for ; so that if the persons seen in Brown Street were the murderers, one of them must have been Richard Crowninshield, Jr., and the other must have been the prisoner at the bar.

<sup>1</sup> Page 183.

<sup>2</sup> Page 61.

Now, as to the proof of his identity with one of the persons seen in Brown Street. Mr. Mirick, a cautious witness, examined the person he saw, closely, in a light night, and says that he thinks the prisoner at the bar is the person ; and that he should not hesitate at all, if he were seen in the same dress. His opinion is formed partly from his own observation, and partly from the description of others. But this description turns out to be only in regard to the dress. It is said, that he is now more confident than on the former trial. If he has varied in his testimony, make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person, when he was first brought to court, and as he saw him get out of the chaise. This is one of the cases in which a witness is permitted to give an opinion.<sup>1</sup> This witness is as honest as yourselves, neither willing nor swift ; but he says, he believes it was the man. His words are, " This is my opinion " ; and this opinion it is proper for him to give. If partly founded on what he has *heard*, then this opinion is not to be taken ; but if on what he *saw*, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever lose his life by my voice on such evidence. But then it is proper to notice, that no inferences drawn from any *dissimilarity* of dress can be given in the prisoner's favor ; because, in fact, the person seen by Mirick was dressed like the prisoner.

The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly now than then, this does not prove him false.<sup>2</sup>

Peter E. Webster saw the prisoner at the bar, as he then thought, and still thinks, walking in Howard Street at half-past nine o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well ; he had long known him. If he then thought it was he, this goes far

to prove it. He observed him the more, as it was unusual to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in this case. But then this person, it is said, had a cloak on, and that he could not, therefore, be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is there is little in it. It may be presumed that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone, than when with the perpetrator.

Mr. Southwick swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at half-past ten o'clock, and as he passed to his own house in Brown Street he saw a man sitting on the steps of the rope-walk; that he passed him three times, and each time he held down his head, so that he did not see his face. That the man had on a cloak, which was not wrapped around him, and a glazed cap. That he took the man to be Frank Knapp at the time; that, when he went into his house, he told his wife that he thought it was Frank Knapp; that he knew him well, having known him from a boy. And his wife swears that he did so tell her when he came home. What could mislead this witness at the time? He was not then suspecting Frank Knapp of anything. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position at this time, it proves the case. Whether you believe it or not depends upon the credit of the witness. He swears it. If true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact they cannot be mistaken; they are right, or they are perjured. As to his not speaking to Frank Knapp, that de-

pend upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you, that, when he testified before the grand jury at Ipswich, he did not then say that he thought the person he saw in Brown Street was Frank Knapp, but that "the person was about the size of Selman." The means of attacking him, therefore, come from himself. If he is a false man, why should he tell truths against himself? they rely on his veracity to prove that he is a liar.<sup>1</sup> Before you can come to this conclusion, you will consider whether all the circumstances are now known, that should have a bearing on this point. Suppose that, when he was before the grand jury, he was asked by the attorney this question, "Was the person you saw in Brown Street about the size of Selman?" and he answered "Yes. This was all true." Suppose, also, that he expected to be inquired of further, and no further questions were put to him. Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses to think that they have done all their duty, when they have answered the questions put to them. But suppose that we admit that he did not then tell all he knew, this does not affect the *fact* at all; because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now she swears positively, that her husband came into the house and told her that he had seen a person on the rope-walk steps, and believed it was Frank Knapp.<sup>2</sup>

It is said that Mr. Southwick is contradicted, also, by Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcilable, and consistent. My learned brother said, on a similar occasion, that there is more probability,<sup>3</sup> in such cases, that the persons hearing should misunderstand, than that the person speaking should contradict himself. I think the same remark applicable here.

You have all witnessed the uncertainty of testimony, when witnesses are called to testify what other witnesses said. Sev-

<sup>1</sup> Page 68.<sup>2</sup> Page 71.<sup>3</sup> Page 181.



eral respectable counsellors have been summoned, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from every thing that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional.<sup>1</sup> I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I, therefore, did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury Street, and whether, for aught he knew, it might not be Richard Crowinshield, Jr. He answered, that he could not tell. He did not understand Mr. Shillaber as questioning him as to the person whom he saw sitting on the steps of the rope-walk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states that Mr. Shillaber entirely misunderstood him. This is certainly most probable, because the controlling fact in the case is not controverted ; that is, that Southwick did tell his wife, at the very moment he entered his house that he had seen a person on the rope-walk steps, whom he believed to be Frank Knapp. Nothing can prove with more certainty than this, that Southwick, at the time, *thought* the person whom he thus saw to be the prisoner at the bar.

Mr. Bray is an acknowledged accurate and intelligent witness. He was highly complimented by my brother on the former trial, although he now charges him with varying his testimony. What could be his motive ? You will be slow in imputing to him any design of this kind. I deny altogether that there is any contradiction. There may be differences, but not contradiction. These arise from the difference in the questions put ; the difference between believing and knowing. On the first trial, he said he did not know the person, and now says the same. Then, we did not do all we had a right to do. We did not ask him who he thought it was. Now, when so asked, he

says he believes it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself more strongly, I admit ; but he has not contradicted himself. He is more confident now ; and that is all. A man may not assert a thing, and still may have no doubt upon it. Cannot every man see this distinction to be consistent ? I leave him in that attitude ; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness, either if he knew who the person seen was, or who he thinks he was. And he may well answer, as Captain Bray has answered, that he does not know who it was, but that he thinks it was the prisoner.

We have offered to produce witnesses to prove, that, as soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How, then, could this fact of the prisoner's being in Brown Street be better proved ? If ten witnesses had testified to it it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, who examined him closely, now swear to their opinion that he is the man.<sup>1</sup>

Miss Jaqueth saw three persons pass by the rope-walk, several evenings before the murder. She saw one of them pointing towards Mr. White's house. She noticed that another had something which appeared to be like an instrument of music ; that he put it behind him and attempted to conceal it. Who were these persons ? This was but a few steps from the place where this apparent instrument of music (of *music* such as Richard Crowninshield, Jr. spoke of to Palmer) was afterwards found. These facts prove this a point of rendezvous for these parties. They show Brown Street to have been the place for consultation and observation ; and to this purpose it was well suited.

Mr. Burns's testimony is also important. What was the defendant's object in his private conversation with Burns ? He knew that Burns was out that night ; that he lived near Brown Street, and that he had probably seen him ; and he

wished him to say nothing. He said to Burns, "If you saw any of your friends out that night, say nothing about it; my brother Joe and I are your friends." This is plain proof that he wished to say to him, if you saw me in Brown Street that night, say nothing about it.<sup>1</sup>

But it is said that Burns ought not to be believed, because he mistook the color of the dagger, and because he has varied in his description of it. These are slight circumstances, if his general character be good. To my mind they are of no importance. It is for you to make what deduction you may think proper, on this account, from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things; first, that he desired Burns not to mention it, if he had seen him on the night of the murder; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion, that Brown Street was a probable place for the conspirators to assemble, and for an aid to be stationed. If we knew their whole plan, and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house; a lonely place, but still a place of observation. Not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner; not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of centrality. The club was found near the spot, in a place provided for it, in a place that had been previously hunted out, in a concerted place of concealment. *Here was their point of rendezvous.* Here might the lights be seen. Here might an aid be secreted. Here was he within call. Here might he be aroused by the sound of the whistle. Here might he carry the weapon. Here might he receive the murderer after the murder.

Then, Gentleman, the general question occurs, Is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown Street on the night of the

murder? Considering that the murder was effected by a conspiracy; considering that he was one of the four conspirators; considering that two of the conspirators have accounted for themselves on the night of the murder, and were not in Brown Street; considering that the prisoner does not account for himself, nor show where he was; considering that Richard Crowninshield, the other conspirator and the perpetrator, is not accounted for, nor shown to be elsewhere; considering that it is now past all doubt that two persons were seen lurking in and about Brown Street at different times, avoiding observation, and exciting so much suspicion that the neighbors actually watched them; considering that, if these persons thus lurking in Brown Street at that hour were not the murderers, it remains to this day wholly unknown who they were or what their business was; considering the testimony of Miss Jaqueth, and that the club was afterwards found near this place; considering, finally, that Webster and Southwick saw these persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them;—it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown Street at the time of the murder.<sup>1</sup>

By the counsel for the prisoner, much stress has been laid upon the question, whether Brown Street was a place in which aid could be given, a place in which actual assistance could be rendered in this transaction. This must be mainly decided by their own opinion who selected the place; by what they thought at the time, according to their plan of operation.

If it was agreed that the prisoner should be there to assist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient. Suppose we could prove expressly that they agreed that Frank should be there, and he was there, and you should think it not a well-chosen place for aiding and abetting, must he be acquitted? No! It is not what *I* think or *you* think of the appropriateness of the place; it is what *they* thought *at the time*. If the prisoner was

<sup>1</sup> Page 205.



in Brown Street by appointment and agreement with the perpetrator, for the purpose of giving assistance if assistance should be needed, it may safely be presumed that the place was suited to such assistance as it was supposed by the parties might chance to become requisite.

If in Brown Street, was he there by appointment? was he there to aid, if aid were necessary? was he there for, or against, the murderer? to concur, or to oppose? to favor or to thwart? Did the perpetrator know he was there, there waiting? If so, then it follows that he was there by appointment. He was at the post half an hour; he was waiting for somebody. This proves appointment, arrangement, previous agreement; then it follows that he was there to aid, to encourage, to embolden the perpetrator; and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid, then he was aiding and abetting. It is enough that the conspirator desired to have him there. Besides, it may be well said, that he could afford just as much aid there as if he had been in Essex Street, as if he had been standing even at the gate, or at the window. It was not an act of power against power that was to be done; it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation. It was important to the security of both that he should be in a lonely place. Now it is obvious that there are many purposes for which he might be in Brown Street.<sup>1</sup>

1. Richard Crowninshield might have been secreted in the garden, and waiting for a signal;

2. Or he might be in Brown Street to advise him as to the time of making his entry into the house;

3. Or to favor his escape;

4. Or to see if the street was clear when he came out;

5. Or to conceal the weapon or the clothes;

6. To be ready for any unforeseen contingency.

Richard Crowninshield lived in Danvers. He would retire by the most secret way. Brown Street is that way. If you find him there, can you doubt why he was there?

If, Gentlemen, the prisoner went into Brown street, by

appointment with the perpetrator, to render aid or encouragement in any of these ways, he was *present*, in legal contemplation, aiding and abetting in this murder. It is not necessary that he should have done any thing; it is enough that he was ready to act, and in a place to act. If his being in Brown Street, by appointment, at the time of the murder, emboldened the purpose and encouraged the heart of the murderer, by the hope of instant aid, if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, Gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The general rule of law is, that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence, but confessions hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired, whether they were purely voluntary, or were made under any undue influence of hope or fear; for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a jury.

Who is Mr. Colman? <sup>1</sup> He is an intelligent, accurate, and cautious witness; a gentleman of high and well-known character, and of unquestionable veracity; as a clergyman, highly respectable; as a man, of fair name and fame.

Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner; he was the head of a family, and had been married by Mr. Colman. The interests of that family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best of motives to visit Joseph Knapp. He came to save, not to des-

<sup>1</sup> Pages 46, 279.

tro; to rescue, not to take away life. In this family he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and the most uncharitable, a perversion of all just views of his conduct and intentions the most unaccountable, to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives, and his own conduct, in a manner to command universal belief and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness acquit himself better, or stand fairer. In all that he did as a man, and all he has said as a witness, he has shown himself worthy of entire regard.

Now, Gentlemen, very important confessions made by the prisoner are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone with the prisoner's brother, N. Phippen Knapp. Whatever conversation took place was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted ; first, that such inducements were suggested to the prisoner, in this interview, that no confessions made by him ought to be received ; second, that, in point of fact, he made no such confessions as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N. P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, a question of belief between the two witnesses. As you decide between these, so you will decide on all this part of the case.<sup>1</sup>

Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted, except by the testimony of Phippen Knapp. He is influenced, as far as we can see, by no bias, or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point, doubtless, and ought to

<sup>1</sup> Pages 46, 67.

have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard what he testifies. No treachery of memory brings to memory things that never took place. There is no reconciling his evidence with good intention, if the facts in it are not as he states them. He is on trial as to his veracity.

The relation in which the other witness stands deserves your careful consideration. He is a member of the family.<sup>1</sup> He has the lives of two brothers depending, as he may think, on the effect of his evidence ; depending on every word he speaks. I hope he has not another responsibility resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected the offered pardon. Events will show who of these friends and advisers advised him best, and befriended him most. In the mean time, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers resting upon his evidence and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side, and want of all motive on the other ? I would gladly find an apology for that witness, in his agonized feelings, in his distressed situation ; in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling. I would gladly impute to any pardonable source that which cannot be reconciled to facts and to truth ; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however reluctantly, which that demands from us.

It is said, Phippen Knapp was probably correct, because he knew he should probably be called as a witness.<sup>2</sup> Witness to what ? When he says there was no confession, what could he expect to bear witness of ? But I do not put it on the ground that he did not hear ; I am compelled to put it on the other



ground, that he did hear, and does not now truly tell what he heard.

If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities.<sup>1</sup> It is unnatural, and inconsistent with the accompanying circumstances. He tells you that they went "to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon"; in other words, to obtain Frank's consent to Joseph's making a confession; and in case this consent was not obtained, that the pardon would be offered to Frank. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman, after having given this pledge to Joseph, and after having received a disclosure from Joseph, go to the cell of Frank for such a purpose as this? It is impossible; it cannot be so.

Again, we know that Mr. Colman found the club the next day; that he went directly to the place of deposit, and found it at the first attempt, exactly where he says he had been informed it was. Now Phippen Knapp says that Frank had stated nothing respecting the club; that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there; that he believes he heard all that was said in Joseph's cell; and that he did not himself know where the club was, and never had known where it was, until he heard it stated in court. Now it is certain that Mr. Colman says he did not learn the particular place of deposit of the club from Joseph; that he only learned from him that it was deposited under the steps of the Howard Street meeting-house, without defining the particular steps. It is certain, also, that he had more knowledge of the position of the club than this; else how could he have placed his hand on it so readily? and where else could he have obtained this knowledge, except from Frank?<sup>2</sup>

<sup>1</sup> Page 67.

<sup>2</sup> Here Mr. Dexter said that Mr. Colman had had other interviews with Joseph, and might have derived the information from him at previous visits. Mr. Webster replied, that Mr. Colman had testified that he learned nothing in relation to the club until this visit. Mr. Dexter

My point is to show that Phippen Knapp's story is not true, is not consistent with itself ; that, taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph and by Frank ; and that Joseph did not state particularly where the club was deposited ; and that he knew as much about the place of deposit of the club as Mr. Colman knew ; why, then Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this, without supposing that Mr. Colman has misrepresented what took place in Joseph's cell, as well as what took place in Frank's cell.

Again, Phippen Knapp is directly contradicted by Mr. Wheatland. Mr. Wheatland tells the same story, as coming from Phippen Knapp, that Colman now tells. Here there are two against one. Phippen Knapp says that Frank made no confessions, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland, that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers, but recollects his reply ; which was, "*Is not this premature?* I think this answer is sufficient to make Frank a principal." Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman. Do you believe Phippen Knapp against these two respectable witnesses, or them against him ?

Is not Mr. Colman's testimony credible, natural, and proper ? To judge of this, you must go back to that scene.

The murder had been committed ; the two Knapps were now arrested ; four persons were already in jail supposed to be concerned in it, the Crowninshields, and Selman, and Chase. Another person at the Eastward was supposed to be in the plot ; it was important to learn the facts. To do this, some one of those suspected must be admitted to turn state's witness. The

denied there being any such testimony. Mr. Colman's evidence was read from the notes of the judges and several other persons, and Mr. Webster then proceeded.

contest was, Who should have this privilege? It was understood that it was about to be offered to Palmer, then in Maine; there was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and particularly for Joseph. He was a young man who had hitherto maintained a fair standing in society; he was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be called upon to disclose them. He went, the first time, in the morning, and was requested to come again. He went again at three o'clock; and was requested to call again at five o'clock. In the mean time he saw the father and Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at five o'clock; but would not, if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at five o'clock. Mr. Colman went to the office at the time, and waited; but, as Phippen was not there, he walked down street, and saw him coming from the jail. He met him, and while in conversation near the church, he saw Mrs. Beckford and Mrs. Knapp going in a chaise towards the jail. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the jail, he received two distinct messages from Joseph, that he wished to see him. He thought it proper to go; and accordingly went to Joseph's cell, and it was while there that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door; he was soon after admitted. A short interval ensued, and they went together to the cell of Frank. Mr. Colman went in by invitation of Phippen; he had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy. He was incredulous as to some of the facts which he had learned, they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him. He, therefore,

put the questions to Frank, as he has testified before you ; in answer to which Frank Knapp informed him, —

1. "That the murder took place between ten and eleven o'clock."

2. "That Richard Crowninshield was alone in the house."

3. "That he, Frank Knapp, went home afterwards."

4. "That the club was deposited under the steps of the Howard Street meeting-house, and under the part nearest the burying-ground, in a rat-hole."<sup>1</sup>

5. "That the dagger or daggers had been worked up at the factory."<sup>1</sup>

It is said that these five answers just fit the case ; that they are just what was wanted, and neither more nor less. True, they are ; but the reason is, because truth always fits. Truth is always congruous, and agrees with itself ; every truth in the universe agrees with every other truth in the universe ; whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias, no prejudice ; he has no feelings to warp him, except, now that he is contradicted, he may feel an interest to be believed.

If you believe Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman.

When told that Joseph had determined to confess, the defendant said, "It is hard, or unfair, that Joseph should have the benefit of confessing, since the thing was done for his benefit."<sup>2</sup> What thing was done for his benefit ? Does not this carry an implication of the guilt of the defendant ? Does it not show that he had a knowledge of the object and history of the murder ?

The defendant said, "I told Joseph, when he proposed it, that it was a silly business, and would get us into trouble."<sup>2</sup> He knew, then, what this business was ; he knew that Joseph proposed it, and that he agreed to it, else he could not get us into trouble ; he understood its bearing and its consequences. Thus much was said, under circumstances that make it clearly evi-

<sup>1</sup> Pages 59, 205.

<sup>2</sup> Page 55.



dence against him, before there is any pretence of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy?

He knew the daggers had been destroyed, and he knew who committed the murder. How could he have innocently known these facts? Why, if by Richard's story, this shows him guilty of a knowledge of the murder, and of the conspiracy. More than all, he knew when the deed was done, and that he went home afterwards. This shows his participation in that deed. "Went home afterwards"! Home, from what scene? home, from what fact? home, from what transaction? home, from what place? This confirms the supposition that the prisoner was in Brown Street for the purposes ascribed to him. These questions were directly put, and directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterwards, and does not excuse himself, is not this an admission that he had a hand in this murder? Already proved to be a conspirator in the murder, he now confesses that he knew who did it, at what time it was done, that he was himself out of his own house at the time, and went home afterwards. Is not this conclusive, if not explained? Then comes the club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must show, not say, how he came by this knowledge. If a man be found with stolen goods, he must prove how he came by them. The place of deposit of the club was premeditated and selected, and he knew where it was.

Joseph Knapp was an accessory, and an accessory only; he knew only what was told him. But the prisoner knew the particular spot in which the club might be found. This shows his knowledge something more than that of an accessory. This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter, and therefore an attempt has been made to excite a prejudice

against it. It is not so. How little is there in it, after all, that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession with what you before knew.

As to its being proposed by Joseph, was not that known?

As to Richard's being alone in the house, was not that known?

As to the daggers, was not that known?

As to the time of the murder, was not that known?

As to his being out that night, was not that known?

As to his returning afterwards, was not that known?

As to the club, was not that known?

So this information confirms what was known before, and fully confirms it.<sup>1</sup>

One word as to the interview between Mr. Colman and Phippen Knapp on the turnpike. It is said that Mr. Colman's conduct in this matter is inconsistent with his testimony. There does not appear to me to be any inconsistency. He tells you that his object was to save Joseph, and to hurt no one, and least of all the prisoner at the bar. He had probably told Mr. White the substance of what he heard at the prison. He had probably told him that Frank confirmed what Joseph had confessed. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret, as it may seem to be an evasion, as he doubts whether it is entirely correct. If it was an evasion, if it was a deviation, if it was an error, it was an error of mercy, an error of kindness,—an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony, or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important; not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible that he can be false, and that he is seeking the prisoner's life through false swear-

<sup>1</sup> Page 59, 205.

ing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have gone through with the evidence in this case, and have endeavored to state it plainly and fairly before you. I think there are conclusions<sup>1</sup> to be drawn from it, the accuracy of which you cannot doubt. I think you cannot doubt that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were :

That you cannot doubt that the Crowninshields and the Knapps were the parties in this conspiracy :

That you cannot doubt that the prisoner at the bar knew that the murder was to be done on the night of the 6th of April :

That you cannot doubt that the murderers of Captain White were the suspicious persons seen in and about Brown Street on that night :

That you cannot doubt that Richard Crowninshield was the perpetrator of that crime :

That you cannot doubt that the prisoner at the bar was in Brown Street on that night.

If there, then it must be by agreement, to countenance, to aid the perpetrator.<sup>2</sup> And if so, then he is guilty as PRINCIPAL.

Gentlemen, your whole concern should be to do your duty, and leave consequences to take care of themselves.<sup>3</sup> You will receive the law from the court. Your verdict, it is true, may endanger the prisoner's life, but then it is to save other lives. If the prisoner's guilt has been shown and proved beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, straightforward one. Doubtless we would all judge him in mercy. Towards him, as an individual, the law inculcates no hostility ; but towards him, if he proved to be a murderer, the law, and the oaths you have taken, and public justice, demand that you do your duty.

With consciences satisfied with the discharge of duty, no

<sup>1</sup> Pages 256, 257.

<sup>2</sup> Pages 205, 236.

<sup>3</sup> Page 257.

consequences can harm you. There is no evil that we cannot either face or fly from, but the consciousness of duty disregarded. A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning, and dwell in the uttermost parts of the sea, duty performed, or duty violated, is still with us, for our happiness or our misery. If we say the darkness shall cover us, in the darkness as in the light our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close ; and in that scene of inconceivable solemnity, which lies yet farther onward, we shall still find ourselves surrounded by the consciousness of duty, to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it.



## BRUTUS'S SPEECH IN JULIUS CÆSAR, III. 2.

After the assassination of Cæsar, Antony is allowed to address the people on condition that he speak no evil of the conspirators while saying all the good he can of Cæsar. Brutus flatters himself that he will obviate all danger from the mob by mounting the rostrum and explaining "The reason of Cæsar's death." Reason to a mob ! It is even to such a point as this that Brutus is carried by his illusions. His ignorance of men's hearts and his blindness to actual facts, we have already seen ; but till now, he had given no proof of his absolute lack of common sense. So little does he know of men that when addressing this multitude, he speaks to them as to so many philosophers ; he sternly forbids himself any persuasive eloquence of animated gesture or pathetic tones, because he himself despises any appeal to the imagination or to the passions, and cares only for what recommends itself to his reason. His speech is a model of the most finished conciseness and studied coldness ; but the irony of facts brings about as unexpected a turn of affairs as ever humiliated the eloquence of a public orator. His speech was received with loud applause, it is true ; but silence would have been better. He spoke of one thing, and all the people understood another ; he spoke of the love of country and of justice ; the people understood him as asking for power and honors ; he spoke of the glory of having cast down tyranny, and the people thought to please him by offering to put him in Cæsar's place ! His laconic and sententious style, his " reasons," his coldness, his lack of sympathy, his ignorance of men and the base facts of life, his inability to gauge the littleness of little souls, — render his conscious patriotism, his honesty of purpose and his angelic candor utterly ineffectual with the many-headed multitude<sup>1</sup> : —

"Romans, countrymen, and lovers ! hear me for my cause, and be silent that you may hear : believe me for mine honor, and have respect to mine honor, that you may believe : censure

<sup>1</sup> Adapted from Stapfer's *Shakespeare and Classical Antiquity*.

me in your wisdom, and awake your senses, that you may the better judge. If there be any in this assembly, any dear friend of Cæsar's, to him I say, that Brutus' love to Cæsar was no less than his. If then that friend demand why

Brutus rose against Cæsar, this is my answer : — **The Speech.**  
 Not that I loved Cæsar less, but that I loved Rome more. Had you rather Cæsar were living and die all slaves, than that Cæsar were dead, to live all free men ? As Cæsar loved me, I weep for him ; as he was fortunate, I rejoice at it ; as he was valiant, I honor him : but as he was ambitious, I slew him. There is tears for his love ; joy for his fortune ; honor for his valour ; and death for his ambition. Who is here so base that would be a bondman ? If any, speak ; for him have I offended. Who is here so rude that would not be a Roman ? If any, speak ; for him have I offended. Who is here so vile that will not love his country ? If any, speak ; for him have I offended. I pause for a reply.

“ *All.* — None, Brutus, none.

“ Then none have I offended. I have done no more to Cæsar than you shall do to Brutus. The question of his death is enrolled in the Capitol ; his glory not extenuated, wherein he was worthy, nor his offences enforced, for which he suffered death. Here comes his body, mourned by Mark Antony : who, though he had no hand in his death, shall receive the benefit of his dying, a place in the commonwealth ; as which of you shall not ? With this I depart, — that, as I slew my best lover for the good of Rome, I have the same dagger for myself, when it shall please my country to need my death.

“ My Countrymen, —

Good countrymen, let me depart alone,  
 And, for my sake, stay here with Antony :  
 Do grace to Cæsar's corpse, and grace his speech  
 Tending to Cæsar's glories ; which Mark Antony,  
 By our permission, is allow'd to make.  
 I do entreat you, not a man depart,  
 Save I alone, till Antony have spoke.”

## ANTONY'S SPEECH IN JULIUS CÆSAR, III. 2.

It was easy for Antony with his artistic temperament, to give tears to the victim of conspiracy. With his splendid capacity of receiving vivid impressions from anything grand, —

“When Antony found Julius Cæsar dead  
He cried almost to roaring.”

When he begged permission of Brutus to speak at Cæsar's funeral, he probably had no intention of turning the opportunity to account : he never guessed the immense effect of his eloquence on the crowd. Not till afterward did Antony perceive the advantage that permission to address the multitude gave him ; and only in the course of his speech did he perceive to what length this advantage might be pushed.

In order thoroughly to appreciate this famous speech, with its strange mixture of good faith and astuteness, of premeditated art and the sudden and irresistible inspiration of the moment, we must picture to ourselves the unpropitious circumstances under which the speaker labored at the beginning. Brutus had stipulated that Antony should cast no blame upon the conspirators, and had himself, the very moment before, publicly justified the murder of Cæsar ; so that the people upon seeing Antony ascend the tribune, all cried with one voice, “ ’Twere best he speak no harm of Brutus here.” “ This Cæsar was a tyrant.” “ We are blessed that Rome is rid of him.” Then Antony began his magnificent address, his eloquence soon carrying his hearers with him, and finally working them up to such a pitch of excitement, that they burst out into groans for Cæsar's death, and cries of revenge for his wrongs. The people departed tumultuously to set fire to the traitor's houses ; and Antony, as he stood there, left alone, said with cynical indifference — not the indifference of an ambitious man pursuing relentlessly a definite aim, but of an elegant conjurer who has succeeded in performing a brilliant piece of juggling by means

of the terrible and powerful weapon of a public appeal to the passions of his audience :—

“Now let it work ! Mischief, thou art afoot,  
Take thou what course thou wilt.”

His splendid presence, thrilling tones, sympathetic nature, thorough acquaintance with himself, his theme in all its bearings, and of the minds and hearts of his hearers, gave him a power seldom possessed.<sup>1</sup>

#### THE SPEECH.

“Friends, Romans, countrymen, lend me your ears ;  
I come to bury Cæsar, not to praise him.  
The evil that men do lives after them ;  
The good is oft interred with their bones :  
So let it be with Cæsar. The noble Brutus  
Hath told you Cæsar was ambitious :  
If it were so, it was a grievous fault ;  
And grievously hath Cæsar answered it.  
Here, under leave of Brutus and the rest,—  
For Brutus is an honorable man ;  
So are they all, all honorable men,—  
Come I to speak in Cæsar’s funeral.  
He was my friend, faithful and just to me :  
But Brutus says he was ambitious ;  
And Brutus is an honorable man.  
He hath brought many captives home to Rome,  
Whose ransom did the general coffers fill :  
Did this in Cæsar seem ambitious ?  
When that the poor have cried, Cæsar hath wept :  
Ambition should be made of sterner stuff :  
Yet Brutus says he was ambitious ;  
And Brutus is an honorable man.  
You all did see that on the Lupercal  
I thrice presented him a kingly crown,  
Which he did thrice refuse : was this ambition ?  
Yet Brutus says he was ambitious ;

<sup>1</sup> Adapted from Stapfer’s *Shakespeare and Classical Antiquity*.



And, sure, he is an honorable man.  
 I speak not to disprove what Brutus spoke,  
 But here I am, to speak what I do know.  
 You all did love him once, — not without cause :  
 What cause withholds you, then, to mourn for him ? —  
 O judgment, thou art fled to brutish beasts,  
 And men have lost their reason ! — Bear with me ;  
 My heart is in the coffin there with Cæsar,  
 And I must pause till it come back to me.

But yesterday the word of Cæsar might  
 Have stood against the world : now lies he there,  
 And none so poor to do him reverence.  
 O masters, if I were disposed to stir  
 Your hearts and minds to mutiny and rage,  
 I should do Brutus wrong, and Cassius wrong,  
 Who, you all know, are honorable men :  
 I will not do them wrong ; I rather choose  
 To wrong the dead, to wrong myself, and you,  
 Than I will wrong such honorable men.  
 But here's a parchment with the seal of Cæsar,  
 I found it in his closet, — 'tis his will :  
 Let but the commons hear this testament, —  
 Which, pardon me, I do not mean to read, —  
 And they would go and kiss dead Cæsar's wounds,  
 And dip their napkins in his sacred blood ;  
 Yea, beg a hair of him for memory,  
 And, dying, mention it within their wills,  
 Bequeathing it, as a rich legacy,  
 Unto their issue.

Have patience, gentle friends, I must not read it ;  
 It is not meet you know how Cæsar loved you.  
 You are not wood, you are not stones, but men ;  
 And, being men, hearing the will of Cæsar,  
 It will inflame you, it will make you mad.  
 'Tis good you know not that you are his heirs ;  
 For, if you should, O, what would come of it !

Will you be patient ? Will you stay awhile ?  
I have o'ershot myself to tell you of it :  
I fear I wrong the honorable men  
Whose daggers have stabbed Cæsar ; I do fear it.

You will compel me, then, to read the will ?  
Then make a ring about the corpse of Cæsar,  
And let me show you him who made the will.  
Shall I descend ? And will you give me leave ?

If you have tears, prepare to shed them now.  
You all do know this mantle : I remember  
The first time ever Cæsar put it on ;  
'Twas on a summer's evening, in his tent,  
That day he overcame the Nervii.  
Look, in this place ran Cassius' dagger through :  
See what a rent the envious Casca made :  
Through this the well-beloved Brutus stabbed ;  
And, as he plucked his cursed steel away,  
Mark how the blood of Cæsar followed it,  
As rushing out of doors, to be resolved  
If Brutus so unkindly knocked, or no ;  
For Brutus, as you know, was Cæsar's angel :  
Judge, O you gods, how dearly Cæsar loved him !  
This was the most unkindest cut of all ;  
For, when the noble Cæsar saw him stab,  
Ingratitude, more strong than traitor's arms,  
Quite vanquished him : then burst his mighty heart ;  
And, in his mantle muffling up his face,  
Even at the base of Pompey's statue,  
Which all the while ran blood, Great Cæsar fell.  
O, what a fall was there, my countrymen !  
Then I, and you, and all of us fell down,  
While bloody treason flourished over us.  
O, now you weep ; and, I perceive, you feel  
The dint of pity : these are gracious drops.  
Kind souls, what, weep you when you but behold  
Our Cæsar's vesture wounded ? Look you here,

Here is himself, marred, as you see, with traitors.

Stay, countrymen.

Good friends, sweet friends, let me not stir you up

To such a sudden flood of mutiny.

They that have done this deed are honorable :

What private griefs they have, alas, I know not,

That made them do it ; they are wise and honorable,

And will, no doubt, with reasons answer you.

I come not, friends, to steal away your hearts :

I am no orator, as Brutus is ;

But, as you know me all, a plain blunt man

That love my friend ; and that they knew full well

That gave me public leave to speak of him :

For I have neither wit, nor words, nor worth,

Action, nor utterance, nor the power of speech,

To stir men's blood : I only speak right on ;

I tell you that which you yourselves do know ;

Show you sweet Cæsar's wounds, poor poor dumb mouths,

And bid them speak for me : but were I Brutus,

And Brutus Antony, there were an Antony

Would ruffle up your spirits, and put a tongue

In every wound of Cæsar, that should move

The stones of Rome to rise and mutiny.

Yet hear me, countrymen ; hear me speak.

Why, friends, you go about to do you know not what.

Wherein hath Cæsar thus deserved your loves ?

Alas, you know not ; I must tell you, then :

You have forgot the will I told you of.

Here is the will, and under Cæsar's seal.

To every Roman citizen he gives,

To every several man, seventy-five drachmas.

Hear me with patience.

Moreover, he hath left you all his walks,

His private arbors, and new planted orchards,

On this side Tiber : he hath left them you,

And to your heirs forever ; common pleasures,

To walk abroad, and recreate yourselves.  
Here was a Cæsar ! When comes such another ?

Now let it work ! Mischief, thou art afoot,  
Take thou what course thou wilt.



OUTLINE OF WEBSTER'S ARGUMENT AT THE  
WHITE MURDER TRIAL.

## A.

## INTRODUCTION.

- I. Personal explanations :
  1. Relation to criminal cases in general ;
  2. Relation to this case ;
    - (a) Brought here not to thwart justice, but help secure it,
    - (b) Has no illwill toward the prisoner,
    - (c) Has a strong desire to punish the murderer,
    - (d) Is willing to share in necessary opprobrium.
- II. Supposed facts in the case :
  1. A cool, calculating, money-making murder has been committed ;
    - (a) The murderer's character is diabolical,
    - (b) The manner of the murder is most shocking,
    - (c) The effect of the crime on the murderer's conscience is to drive him to suicide, and this is confession.
- III. Attitude of the community :
  1. There is great excitement, rewards are offered, committees are appointed, and efforts are made to detect the criminals ; but
  2. There is admiration for the murderer's skill, and praise for the excellence of the performance ; which
    - (a) Perverts the minds of the young, and
    - (b) Forgets that the crime is murder.
- IV. Great labor is required to remove all doubts of the prisoner's guilt.

## B.

## PROVISIONAL REFUTATION.

- I. Complaints and answers :

1. It is complained that
  - (a) Special counsel is employed by the prosecution,
  - (b) Rewards have been offered,
  - (c) Vigilance committees have been appointed,
  - (d) A special session of the court has been called,
  - (e) The prisoner was not made principal at first, that his indictment as such is an after-thought.
2. It is answered that
  - (a) Special counsel has been employed in like cases (Goodridge Robbery) and no fault found,
  - (b) Rewards are always offered in such cases,
  - (c) The moral sense of the community demanded the appointment of vigilance committees,
  - (d) No trial was possible without a special session of court,
  - (e) The charge is false, the case of the Knapps had not been previously before the grand jury.
3. It is claimed by defendant's counsel that
  - (a) They are more concerned for the law than for their client,
  - (b) Law is made for the protection of the innocent rather than for the punishment of the guilty.
4. It is answered that
  - (a) The verdict will vindicate the law,
  - (b) Let the law be so administered as to protect such innocent persons as the murdered White, by punishing the guilty.
5. The prisoner's counsel does not meet the case ; they should either deny or admit the charge.

## C.

### THE DISCUSSION.

#### I. The case stated :

1. Proposition in form of question. The question is, (i) "Was Captain White murdered in pursuance of a conspiracy, and was the prisoner one of the conspirators? If so, (ii) was he so connected with the

murder that he is liable to be convicted as principal?"

He is indicted on three counts, as principal ; (i) as having done the deed with his own hand, (ii) as an aider and abettor of Richard Crowninshield, Jr., (iii) as aider and abettor of some person unknown. If the jury believe him to be guilty on any of these three counts or in any of these ways, he is to be convicted.

2. The case is peculiar ; for

- (a) The supposed immediate perpetrator of the deed has committed suicide,
- (b) The supposed original planner of the deed, after making a full confession, now refuses to testify.

3. The case is specially important ; for

- (a) If the prisoner is not convicted as principal, no one can be,
- (b) Nor can any one be convicted as accessory,
- (c) The prisoner and his fellow conspirators will be set loose on the community.

II. The Proof Stated : The prosecution relies on,

1. Undisputed circumstances ;

- (a) A letter from Mr. Palmer from Belfast, implicating the Knapps,
- (b) Fabricated letters from the Knapps, casting suspicion on S. White,
- (c) The absence of Captain White's housekeeper, Mrs. Beckford,
- (d) The abstracting and secreting of the door key to Captain White's chamber, and the unfastening of his window from within.

2. Testimony of witnesses, undisputed and disputed.

III. The case argued :

- 1. The murder of Mr. White was in pursuance of a conspiracy, and the prisoner was one of the conspirators. The first part of the proposition is evident from ;
  - (a) The appearance of White's premises the morning after the crime,

- (a) There had been no alarm,
  - (b) The chamber window had been unbarred from within,
  - (c) The key was gone from the door,
  - (d) The track of the murderer coming towards the window was still visible,
  - (e) The plank still remained against the house at the window,
  - (b) The motives of Joseph Knapp for desiring the death of Mr. White, and the destruction of a will, for
    - (a) His wife's mother was the supposed heir to one half of White's estate, should he die without a will,
    - (b) Mr. White was known to have bequeathed the bulk of his estate to his nephew, Stephen White,
    - (c) A previous will was supposed to be more favorable to Mrs. Beckford,
  - (c) Palmer's testimony that the Knapps intended to steal the will,
  - (d) Many circumstances confirming this evidence,
  - (e) The attempt to cast suspicion on S. White.
- The second part of the proposition follows from ;
- (f) The concession of counsel that Crowninshield was the actual perpetrator, for
    - (a) Crowninshield had no motive to do the murder,
    - (b) All circumstances show him to have been instigated by the Knapps, and aided and abetted by Frank Knapp.

The Conspiracy was — "J. J. Knapp, desirous of destroying the will and taking the life of the deceased, hired a ruffian, who with the aid of other ruffians was to enter the house and murder him in his bed." This is evident from ;

- (g) The Knapps' knowledge of the will months ago, and J. J.'s having false keys giving him access to it,



- (a) Endicott testifies to this,
- (b) Palmer testifies to this.
- (c) It is objected that Palmer is not a competent witness :
  - It is answered,
  - (1) He is not chosen by the government, he is the confidant of the conspirators,
  - (2) Circumstances corroborate his testimony,
  - (3) The attempt to impair his testimony has failed,
  - (4) He got his information from the Knapps, as shown by
    - (1) The facts testified to,
    - (2) His letter from Belfast,
    - (3) Several meetings,
- (h) The murder's being contemplated for several weeks, for
  - (a) Crowninshield was in Wenham in March and called for J. J. Knapp,
  - (b) Frank Knapp was in Danvers in February,
- (i) J. J. Knapp's asking Frank 'when he was going to kill the old man,' and saying 'he would not pay if it were not done soon,'
  - (a) Leighton testifies to this,
- (j) The action of the Knapps and others implying their connection with the conspiracy, for
  - (a) The two fabricated letters expose the author's guilt, for
    - (1) They attempt to cast suspicion on S. White,
    - (2) They reveal the writer's knowledge of the details of the murder,
  - (b) The Knapps melted the dagger before suspicion was fastened upon them, indicating guilt,
  - (c) The feigned robbery was an attempt to divert suspicion,
  - (d) J. J. Knapp paid Crowninshield a sum of

money in five-franc pieces about April 24  
for

- (1) He received a large sum in such pieces about April 17,
- (2) He deposited it in a bank in Wenham,
- (3) He was in Wenham with Crowninshield April 24,
- (4) Crowninshield spent several such pieces immediately thereafter, as also did Palmer,
- (5) They refuse to tell where they got the money,

(e) Crowninshield was greatly excited when Palmer was arrested and attempted to communicate with him,

(k) J. J. Knapp's having secreted the door key, and having opened the chamber window, for

- (a) He had free access to the house,
- (b) He frequently visited there,
- (c) He could do this without suspicion,
- (d) He was there the previous Saturday evening,

(l) Frank Knapp's being in White's yard between 3 and 4 o'clock the morning after the murder,

(a) Savary testifies to having seen him there.

(m) Summary of the proofs that there was a conspiracy to murder White, and that the prisoner was in it.

2. The prisoner, Frank Knapp, was present aiding and abetting the murder :

[Exposition of terms :

A. To be present aiding and abetting includes not only actual presence and participation, — but

(a) Being at a distance, co-operating, watching

(1) To give alarm,

(2) To prevent relief,

(3) To assist in escape, or

(b) Knowing the object and purpose of the assassin.

(Chief Justice.)

B. Murder is of two kinds :

(a) Killing in a fray,

- (b) Killing, premeditated, deliberate, secret. In this kind the intention is assumed, and presence actual or constructive is proof of intention to aid and abet.]
- (a) The suggestion that Frank Knapp was present out of curiosity or to hear the news, or with any other intention than to aid and abet, is absurd ; for
  - (a) The law construes readiness to assist and power to assist as assisting ;
    - (1) It is so stated by Chief Justice Foster,
  - (b) It is claimed that the prisoner could not afford aid from Brown Street, and therefore cannot be convicted as principal ; this is beside the question, which is
    - (a) Was he there to aid and abet the murder ?
    - (b) Was he there by appointment with Crowninshield ?
- (c) Frank Knapp was in Brown Street as an aider and abettor, for
  - (a) He knew of the proposed murder,
    - (1) He had that day visited Joseph J. at Wenham,
    - (2) He had that day visited Crowninshield at Danvers,
    - (1) He had hired a horse, refusing to tell where he was going,
    - (3) He had met the Crowninshields several times in a few days,
    - (4) He had seen Mrs. Beckford and knew she would be absent,
    - (5) He had seen one or another conspirator every day,
- (d) Frank Knapp's presence in Brown Street would give courage to Crowninshield,
- (e) His interest lay in being somewhere else, yet he does not explain his presence in Brown Street, he did nothing to prevent the murder,
- (f) Whatever is aid in actual presence is aid in con-

structive presence, and Frank Knapp was constructively present,

(a) This is the decision in cases of Hyde, Kelly, *et al.*,

(g) Of the four conspirators, Frank Knapp would be most likely to be present, for

(a) He was fond of exploits,

(b) He was expert in the use of weapons,

(c) None of the others could be there, as their whereabouts are known,

(h) Frank Knapp has given no satisfactory account of himself at the time of the murder, for

(a) His attempted *alibi* fails,

(1) Mr. Page's testimony is unsatisfactory in many ways,

(2) Mr. White was uncertain as to the night,

(3) Mr. Balch has given different and conflicting accounts,

(4) Mr. Burchison makes it impossible to trust his memory,

(5) Mr. Forrester is entirely uncertain as to the night,

(6) Osborn's books show that the night he was with these young men, was the night previous to the murder,

(b) Other testimony brought forward by the defendant is unreliable, for

(1) His brother makes contradictory statements,

(2) His father is too confused to give trustworthy testimony,

(1) He was grief-stricken,

(2) He was that evening assigning his property to a friend,

(3) Mr. Shepard contradicts it,

(4) Mr. Treadwell contradicts it,

(c) The *alibi* is only an after-thought.



Summary of evidence raising presumption of the prisoner's guilt.

- (i) Two persons were seen under suspicious circumstances in Brown Street several times the evening of the murder, one of whom Mr. Mirick took for the prisoner,
- (j) Later two persons were seen acting suspiciously in Howard Street and again in Brown Street,
- (k) Later a deadly weapon was found hidden where they had met,
- (l) Inference, these persons were the murderers of Mr. White, for
  - (a) They acted suspiciously,
  - (b) They met several times as if concerting for a crime,
  - (c) They avoided recognition,
  - (d) They were in a lonely place, but could look into every room in White's house,
  - (e) They fled precipitately at the last meeting,
  - (f) The murder was committed between these meetings,
  - (g) A deadly weapon was found where they had met,
  - (h) Crowninshield was one of these persons, for
    - (1) It is known that he was in town, and he does not satisfactorily account for himself,
    - (2) Two of the four conspirators account for themselves,
  - (i) Frank Knapp was the other person, for
    - (1) He gives no satisfactory account of himself,
    - (2) Mr. Mirick, a cautious witness, believes it to be him,
    - (3) Mr. Webster believes he saw Frank walking in Howard Street about 9.30,
    - (4) Mr. Southwick is positive he saw Frank walking in Brown Street at 10.30,
    - (5) Captain Bray thinks it was Frank Knapp,

(6) These streets were a rendezvous for Knapp and Crowninshield,

(1) Miss Jaqueth had noticed them,

(2) The weapon was found there,

(7) Knapp asked Burns not to tell if he saw him out that evening.

Summary of proofs that Brown Street and Howard Street were a place of rendezvous for Frank Knapp and Crowninshield, and that they were there on the evening of the murder.

(m) It is objected that Brown Street was not a suitable place from which to render aid. This must be determined by those who chose it. The purpose of Knapp's presence might be that,

(a) Crowninshield was secreted in the garden and awaited a signal, or

(b) Awaited advice as to the time of entering the house, or

(c) Needed help in making his escape, or

(d) Awaited a signal that the street was clear, or

(e) Needed some one to conceal his weapon or his clothes, or

(f) Needed aid in some unforeseen contingency.

(n) Joseph J. Knapp confessed in prison to Mr. Colman, a clergyman, that (i) The murder took place between ten and eleven o'clock, (ii) Crowninshield was alone in the house, (iii) Frank Knapp went home afterwards, (iv) the club was deposited under the Howard Street church steps, (v) The dagger had been worked up at the factory,

(a) Mr. Colman testifies to this and is to be believed, for

(1) He is an intelligent, accurate, cautious witness,

(2) He was Joseph J. Knapp's pastor and intimate friend,

- (3) What he says is consistent with all the circumstances,
- (4) If J. J. Knapp now refuses to testify, it is at the request of friends who hope to profit by his refusal,
- (5) If Mr. Colman's statement is contrary to Mr. N. P. Knapp's it is still to be received, for
  - (1) N. P. Knapp now contradicts what he formerly stated,
  - (2) His statement is inconsistent with circumstances,
  - (3) It is inherently improbable,
  - (4) He is an interested witness,
  - (5) He is contradicted by Mr. Wheatland,
  - (6) He formerly told the same story which Mr. Colman tells,
  - (a) Mr. Wheatland testifies to this,
- (7) When told of J. J.'s confession, F. Knapp asked, "Is this not premature?"
- (6) When Mr. Colman received the confession, he supposed he would not be obliged to testify, being a clergyman,
- (7) He found the club where he says J. J. Knapp told him to look for it,
- (8) His statement merely confirms what is known from other sources,
- (o) Frank Knapp, upon being questioned, confirmed J. J. Knapp's statement to Mr. Colman,
- (p) In subsequent interviews, Frank Knapp revealed his knowledge of the murder and his complicity in it, for
  - (a) He called the privilege of turning state's evidence accorded to J. J. unfair, as the thing was done for his benefit,
  - (b) He said, "I told J. J. it was a silly business and would get us into trouble,"

- (c) He knew the dagger had been destroyed,
- (d) He knew who had committed the murder,
- (e) He knew when it was done,
- (f) He knew where the club was hidden,
- (g) He went home after the murder,
- (q) Mr. Colman's testimony is said to be inconsistent with his subsequent actions ; but
- (r) His inconsistent conduct is all in favor of F. Knapp and shows a friendliness to him.

## D.

### CONCLUSION.

#### I. Summary of Inferences.

The following conclusions must be inferred from the circumstances and the testimony :

- A. There was a conspiracy for the purpose of committing the murder ;
- B. The Crowninshields and the Knapps were parties to this conspiracy ;
- C. The prisoner knew that the murder was to be committed on the evening of April 6th ;
- D. The murderers of Captain White were the suspicious looking persons in and about Brown and Howard Streets that night ;
- E. Richard Crowninshield was the perpetrator of that crime ;
- F. The prisoner at the bar was on Brown Street that night ;
- G. If there, he was there by agreement with Crowninshield, to aid the perpetrator ; and if so, he is guilty as PRINCIPAL.

#### II. Address to the Jury :

It is the duty of the jury —

- A. To apply the law as delivered by the court ;
- B. To remember the safety of the public, as well as what is due the prisoner ;
- C. To decide according to knowledge and conscience regardless of consequences.



## OUTLINE OF BURKE'S SPEECH ON CONCILIATION WITH THE AMERICAN COLONIES.

### A.

#### INTRODUCTION.

1. The return of the penal bill is a good omen ;
2. The subject is grave and demands fixed opinions ;
3. Parliament has changed its opinions frequently ; hence
4. The American Colonies are kept in a state of agitation ;
5. Though requested to formulate a scheme of government,  
I hesitate, for I doubt,—
  - (a) My own ability,
  - (b) The value of government on paper.
6. I consent, for I believe in,—
  - (a) The character and judgment of the English people,
  - (b) The efficacy of the proposition, which is,
7. “I propose *peace* with the Colonies by restoring their former confidence in the mother country” ; for
  - (a) This is better than refined policy,
  - (b) Conciliation has already been declared admissible even without submission on the part of the Colonies,
  - (c) The principle is broad enough,
  - (d) We, the superior power, may offer it with safety and honor ;
8. This proposition raises two questions ;
  - (a) Shall we concede ?
  - (b) What shall the concession be ?
9. To determine either, it is necessary to examine the nature and circumstances of these colonies.

### B.

#### DISCUSSION.

FIRST : — *Condition of American Colonies.*

- I. Population : (a) Population is already large ;  
(b) It is very rapidly increasing ; hence

- (1) It will admit of no narrow and mean policy.

II. Commerce : 1. American commerce is of great importance to us ;

- (a) Mr. Glover's calculations have shown this,

- (b) An exhibition of the growth of exports shows it,

- (c) American trade has been the life of all our trade,

- (d) This is the growth of sixty-eight years,

- (e) A statement of imports would show the same,

- (f) Agricultural products are of immense value,

- (g) Fishery products are of immense value :

A. America, then, is well worth making an effort to retain.

B. But fighting America is not the best way to retain her : for

1. Force is only a temporary means ;
2. Force is an uncertain means ;
3. Force impairs the value of what is fought for ;
4. Force is out of our experience in governing colonies ;
5. Force cannot be used successfully against the American people ; for

III. Character : (a) They are ardent lovers of liberty, because

- (a) They are descendants of Englishmen, and possess English traits,

- (1) They emigrated when the spirit of liberty was highest,

- (2) The English were always tender on taxation,

- (3) The Colonies are tender on the same point,

- (b) Their form of legislature fosters liberty,

- (c) Religion in the North fosters liberty,
  - (1) They are Protestants, and
  - (2) They are mainly dissenters from the Church of England.
- (d) The presence of slavery in the South fosters the spirit of liberty among the free,
- (e) Their education, specially in law, fosters the spirit of liberty,
- (f) Their distance from the governing power has a like effect.

(Recapitulation.)

SECOND : — *Treatment of the Colonies.*

- C. (Transition) Something must be done with their spirit of liberty, at once, or we shall lose the Colonies : for
  - 1. Every recurrence of trouble increases intractability ;
  - 2. They have shown their independence of us ;
  - 3. They have organized satisfactory governments,
    - (a) Lord Dunsmore's report is authority ;
  - 4. Massachusetts has found anarchy tolerable ;
  - 5. Our present treatment only depreciates the value of freedom.
- D. The colonies cannot be given up : for
  - 1. This proposal met no support in parliament.
- E. The spirit of the Colonies cannot be changed as inconvenient by removing the causes : for
  - 1. It would be attended with great difficulties, if not impossibilities ; because
    - (a) Stopping of grants of land would not do it,
      - (a) The Colonists would occupy unsettled land already granted,
      - (b) They would occupy without grants,
        - (1) They have already done so,
      - (c) They would become dangerous to English settlements, and officers,
      - (d) It would contradict our national policy,
    - (b) Impoverishing the Colonies would not do it, for

- (a) It will render them unserviceable to us,
  - (b) Arms would still be their recourse,
  - (c) It would necessitate falsifying their pedigree,
  - (d) It would necessitate changing their religion,
  - (e) It would necessitate destroying their intelligence,
  - (f) It would be necessary to annihilate their legislature,
  - (g) It would involve freeing slaves, and
    - (a) These, armed, might fight us,
    - (b) It would stop our slave trade,
  - (h) It would involve pumping the ocean dry.
- F.* This spirit cannot well be prosecuted as criminal : for
1. It would be putting communities on a level with individuals ;
  2. There is no provision for indicting communities ;
  3. It would call any state's claim of privilege treason ;
  4. It would make one of the parties judge in the case ;
  5. This method has already been tried and abandoned ;
    - (a) Rebellion was declared in Massachusetts Bay,
    - (b) No proceedings have been instituted ;
  6. All our attempts in this direction have been dismal failures :  
 There is, therefore, but one other possibility, which is
- G.* The spirit of the Colonies must be complied with as necessary, perhaps as a necessary evil : for
1. This will conciliate them ; for
    - (a) It involves concession of what they demand,  
 — “no taxation without representation ;”
  2. Ignoring the question of our right, it is our best policy ;
  3. It will restore tranquillity, by
    - (a) Giving the colonies part in the constitution,
    - (b) Giving them our assurance of fairness and fidelity ;



4. It is necessary ; for
  - (a) The satisfaction of the Colonies,
  - (b) Our own dignity and consistency ;
5. The moderate anti-concessionists hope no good from taxation.

Objection : If this concession is made, the Colonies will attack the trade-laws ;

Refutation : It is confessed that trade-laws are of no use ;

- (a) Pernicious tax-laws, then, merely guard useless trade-laws,
  - (b) Trade-laws are not useless but they are not in the case,
  - (c) The quarrel is on taxation,
  - (d) To prove a quarrel against trade-laws, tax-laws must be repealed,
  - (e) To sustain tax-laws thus would be to punish for our conjectures,
  - (f) This objection and all others are conjectures in defiance of fact and experience ;
6. Concession and conciliation are enforced by four capital examples ; — the cases of Ireland, Wales Chester and Durham ;
    - (a) Not English arms but the English constitution conquered Ireland,
      - (a) Its vital principle of free government is intact,
      - (b) It has always assessed its own taxes,
      - (c) Its grants are a source of wealth to England,
    - (b) England attempted to govern Wales by force, and failed, the Border being in perpetual alarm,
      - (a) The same restrictions upon liberty were imposed, as in the case of the Colonies,
      - (b) The result was vexation and violence,
      - (c) Representation in parliament was conferred,
      - (d) The result was peace, order, harmony,

- (c) Chester was without rights, and turbulent,
  - (a) It petitioned for liberty, which was granted, and
  - (b) Wrongs were redressed, and anarchy became obedience,
- (d) Durham was without free legislation, and rebellious,
  - (a) It petitioned for redress, and
  - (b) The concession of the principle now at stake, "no taxation without representation" secured peace ;
- 7. Americans are better fitted in every way to receive a part in constitutional rights ;
  - (a) They are English and speak our language,
  - (b) They are more numerous, tenfold,
  - (c) Their spirit is less fierce and intractable,
  - (d) Objection : Our legislation is perfect for them,
  - (e) Answer : So it was for Ireland, Wales, Chester and Durham, and failed,—virtual representation was not enough.

Objection : Actual, direct representation is impracticable ;

Answer : 8. We may find an equivalent in a substitute,

- (a) (General) Let the Colonies be treated according to the spirit of the Constitution,
- (b) (Specific) Let them vote aid to the mother country instead of submitting to a tax imposed by her.

THIRD : — *Resolutions.*

The resolutions state *facts* which if conceded will insure peace and the obedience of the Colonies.

I. Resolutions proper :—

1. The Colonies have had no representation in parliament ;
  - (a) This resolution is the language of the act of parliament ;
2. The Colonies have been taxed by parliament, often to their disadvantage ;

(a) This resolution is the language of the act of parliament,

(b) The words of grievance are justified, for

(a) Parliament has conceded it by repeal laws,

(b) It is conceded by Lord North's Resolution ;

3. No means of representation has been devised for the Colonies ;

4. The Colonies have legally constituted assemblies competent to assess and collect taxes for all public expenses ;

(a) The whole tenor of their acts shows this,

(b) The language of their grants shows this,

(c) If they were not competent, the ministers are impeachable ;

5. The Colonies have often made generous grants to the Crown, which have been accepted ; for

(a) The records of the Indian wars show this,

(b) The records of foreign wars show it,

(c) Resolutions reimbursing them are on record,

(a) April 4, 1748,

(b) January 28, 1756,

(c) Many others,

(d) The journals say nothing on revenue by imposition ;

6. Experience shows the wisdom of allowing the Colonies to grant us supplies and aid instead of our imposing them :

H. Every alternative to allowing the Colonies their share in our constitution is removed, and

(Conclusion) 1. You must abandon theory and abide by experience ;

2. They must be granted the full right of legislation ;

3. Peace must be secured by conciliation.

II. Corollaries : —

1. The Boston Port Bill — and like obnoxious legislation — must be repealed ;

- (a) It is a dangerous precedent,
- (b) It was passed irregularly ;
- 2. The charter of Massachusetts Bay Colony must be restored ;
- 3. The Act for bringing Americans to England for trial must be repealed.
- 4. It will be proper to secure to the Colonies fair courts of law ;
- 5. It will be proper to regulate the Courts of Admiralty ; for
  - (a) They are incommodiously situated,
  - (b) They partake in the fruits of their own condemnation.

### III. Objections refuted : —

- 1. The Resolutions prove too much, and go to the whole matter of legislation ;

Answer : (a) The grievance is expressed in the words of an act of parliament, not mine,

(b) The inferences drawn are not mine,

(c) The grievance coincides exactly with the case of the Colonies,

(d) The colonists demand only what is reasonable,

(e) Government is founded on compromise,

(f) Possible loss as well as gain must be considered,

(g) Colonies will respect our legislation when it is their security ;

- 2. This concession to the Colonies would dissolve the unity of the empire ;

Answer : (a) This unity is an unheard of thing,

(b) Any subordination of parts excludes unity,

(c) England cannot be head and members too,

(d) There will still remain the same unity as is present with England, Ireland, Wales, Chester and Durham ;

- 3. Lord North proposed to free from taxation any Colony which should guarantee an amount satisfactory to the mother country, &c., she being judge ;



- Answer : (a) This proposition is a mere project, lacking  
 (a) reason, (b) experience, (c) analogy, (d)  
 root in the Constitution,  
 (b) It will be fatal to the Constitution,  
 (a) Lord North must still settle the quota  
 of each Colony,  
 (b) You can neither add nor alter,  
 (c) It does not satisfy the complaint of the Col-  
 onies,  
 (a) It gives the same grievance for a remedy,  
 (b) You would object to some sources of rev-  
 enue,  
 (d) It will plunge you into great difficulties,  
 (a) Colony agents could not have general  
 power, and  
 (b) Attempts at settlement would end in con-  
 fusion,  
 (c) You must burden the innocent with the  
 guilty or for them,  
 (d) If you settle a permanent contingent,  
 you have no revenue,  
 (e) If you change the quota, you have a new  
 quarrel,  
 (e) The object of the proposal is destruction to  
 the Colonies, not advantage to ourselves,  
 (f) A comparison of Lord North's proposal with  
 the proposal of conciliation by conceding to  
 the Colonies the privilege of taxing them-  
 selves, shows all the advantages to be on the  
 side of the latter.

## C.

## CONCLUSION.

4. The financier objects, that the concession will  
 give us peace, but it will give us no revenue ;

- Answer : (a) It will give the Colonies the power of refusal of  
 taxes,  
 (b) This is the mightiest of all sources of revenue,

- (a) Our experience proves this,
- (b) All men desire the honor and glory of their country,
- (c) Government thus becomes the stakeholder of parties,
- (d) This encourages instead of destroying generosity,
- (e) No revenue can be gotten from America by compulsion,
- (f) The strongest of ties is the association of civil rights with the prosperity of government,
- (g) The love of the English people is the life of the English nation,
- (h) Magnanimity in politics is the truest wisdom ;

I. An American revenue must be secured as American empire has been secured, by the granting of English privileges.

(Proposition proved).

As the American Colonies have no representation in Parliament, they must be conciliated by conceding to them the privilege of levying their own taxes.

## OUTLINE OF HUXLEY'S THREE LECTURES ON EVOLUTION.

### A.

#### INTRODUCTION.

1. Man's conception of the nature of things has been of slow growth ;
2. The *constancy* of the order of nature is now the dominant idea ;
  - (a) All events are based on cause and effect,
  - (b) All notion of chance is excluded,
  - (c) All human calculations are based upon it,
  - (d) The basis is completely logical ;
3. This notion of constancy does not extend into the past ;
4. Whether events always happened in this fixed order, is a historical question ; its answer must be sought in the same way as the answer to other historical questions.

### B.

#### DISCUSSION.

##### I. The case stated : —

1. There are three hypotheses for the history of nature ;
  - (a) The universe has always existed in its present condition,
  - (b) The universe came into existence without any precedent condition from which it could naturally have proceeded,
  - (c) The present universe has been evolved by a natural process, from an antecedent state, that from another, and so on ; no limit can be assigned to past changes.
2. These hypotheses mean : —
  - (a) An observer, no matter how far back, would have seen the earth as it now is — animals, plants, mountains, plains, waters. This is not inconsistent with uniformitarianism.

- (b) An observer would, at a period not remote, have seen chaos, then the various parts coming into being in six natural days in the following order, — light, sky or firmament, vegetation, heavenly bodies, aquatic animals and birds, quadrupeds and man. This is Milton's theory in *Paradise Lost*.
- (c) An observer would, at any late period, have seen a state of things similar to the present, the likeness becoming less and less as the period of observation is remote from the present: the distribution of mountains, plains, lakes, would change according to a slow natural process; the framework of the earth would be at a very remote period only a nebulous mass; the forms of life would grow simpler and simpler, presenting in the earliest stages, undifferentiated protoplasmic matter. This hypothesis presupposes no breach of continuity. All is produced by a natural process.

## II. The evidence stated : —

1. *A Priori* evidence cannot be used; for
  - (a) This is a matter of historical fact, not involving cause or motive;
2. It must be settled by historical evidence, which is of two kinds;
  - (a) Testimony, the report of witnesses,
  - (b) Circumstantial evidence, the testimony of other things than human witnesses;
3. Circumstantial evidence, when clear and intelligible, is stronger than testimony; for
  - (a) It is impossible to falsify it in this case,
  - (b) It cannot be mistaken in this case,
  - (c) Human testimony is open to many doubts,
  - (d) Even accurate men are easily mistaken,
  - (e) Witnesses are actuated by evil motives.

## III. The case argued : —

1. The first, or "Eternity," hypothesis is incapable of verification by any evidence; for



- (a) Its verification would demand an eternity of witnesses,
- (b) Its verification would require an infinity of circumstances,
- (c) Neither of these is attainable ;
- 2. What evidence there is is against it ; for
  - (a) The earth's crust is composed of layers gradually formed,
    - (a) They are like those forming at present,
    - (b) They contain fossils of life, extinct and existing,
  - (b) The strata of the earth's crust furnish a record of a gradually changing life on the earth,
  - (c) The strata show that the present condition of things is of only recent existence :
- A. The first hypothesis must be abandoned.
  - 1. Explanatory. The second is called the "Miltonic" hypothesis rather than the "Doctrine of Creation," or the "Biblical Doctrine," or the "Mosaic Doctrine ;" because
    - (a) It is an historical not a doctrinal or philosophical question,
      - (a) It means *how*, not *why* things came to be as they are,
    - (b) The Bible does not necessarily sanction it,
      - (a) Our notion is traceable to Milton's poem,
      - (b) Scientists interpret the Bible differently,
      - (c) Many Biblical scholars explain it differently,
      - (d) The Bible may sanction evolution,
    - (c) There is no evidence that Moses wrote the account in Genesis,
      - (a) This is the opinion of eminent clergymen,
      - (b) This is the opinion of Hebrew scholars,
    - (d) Milton leaves no doubt as to his meaning ;
  - 2. Only circumstantial evidence will be used in examining this hypothesis ; for
    - (a) Testimonial evidence is incompetent,
      - (a) Scholars disagree as to its authenticity ;

3. Circumstantial evidence does not justify the hypothesis, but so far as it goes, contradicts it ;
  - (a) Milton asserts that plants made their appearance the third day,—so that there must have been plants like the present, for if not
    - (1) Either special creation has occurred since, or
    - (2) Evolution has taken place in the plant world,
  - (b) Milton asserts that animal life, aquatic and aerial, appeared on the fifth day, terrestrial quadrupeds and man on the sixth day, —
  - (c) But remains of animal life are found in the oldest strata of the earth's crust,—these must therefore have been the products of the fifth day's creation,
  - (a) There is therefore no geological record of the first four Miltonic days,
    - (a) Milton's order of creation is,—fishes and whales, birds, terrestrial animals,—
    - (b) But terrestrial animals occur long before birds in the geological record,
  - (b) There is therefore lack of harmony in the two records, so far as they exist,
    - (a) Milton makes fishes and whales contemporary creations,
    - (b) Fishes in abundance are found in the earlier strata, but no whales,
  - (c) The geological record contradicts the Miltonic,
    - (a) No fishes of the present kind are found in the earlier strata, hence,
  - (d) Either (i) Special creations have occurred at different times, of which there is no record, or
    - (ii) There has been an evolution of species, or
    - (iii) The whole account must be given up as without evidence or contrary to evidence,
  - (e) Circumstantial evidence further contradicts Milton, for

- (a) It shows the processes of creation to have been of incalculable duration,
  - (b) It shows that what is now dry land, was once the bottom of the sea,
    - (1) The sides of mountains are like the bottom of the sea at present,
    - (2) Mountains are made largely of the same material,
  - (c) It shows that changes have gone on gradually and slowly, with no discontinuance of nature's operations :
- B.* The second, or Miltonic hypothesis is highly improbable; even more, it is clearly negatived by the evidence at hand.
1. Explanatory.
    - (a) From the nature of the third, or " Evolution " hypothesis, testimonial evidence cannot be used,
    - (b) Three kinds of evidence will be used,
      - (i) One is neutral, neither helping the hypothesis, nor inconsistent with it,
      - (ii) One raises a strong probability, but does not prove it,
      - (iii) One may be called demonstrative of its occurrence.
  2. Summary of what has so far been shown, and reparation of future discussion.
  3. Objection : The hypothesis of evolution is untenable ; for
    - (a) Certain Egyptian mummied animals, of 4,000 years ago, are like their species of to-day,
    - (a) This is the case with dogs brought to England ;
  4. Answer : Four thousand years, in the circumstances, is too short a period ; for
    - (a) The change in animal structure depends on surrounding conditions, and the surroundings have not changed,
    - (a) The geography is the same as 4,000 years ago,

- (b) The flora is the same,
- (c) The character of the inhabitants is the same,
- (b) Other instances of a greater time required are well known now,
  - (a) Animal remains are found, at the Whirlpool and Goat Island, exactly like those now in Lake Erie,
  - (b) These must have been deposited 30,000 years ago,
  - (c) Certain chalk forming animals have not changed for a still longer time,
    - (1) The *Terebratula* and } are in
    - (2) *Globigerinæ* }
 the oldest chalkbeds, and the newest,
  - (d) Certain fishes — *Beryx* — are found fossilized in very old strata, and still existing,
  - (e) Certain present molluscous forms are found fossilized in the very oldest strata,
  - (f) Examples of animal life in the Mesozoic Age are found at great intervals, unchanged,
- (c) These facts do not make against evolution, unless it assumes continued modification or modification at a uniform rate ;
- 5. Persistent forms are consistent with evolution ; for
  - (a) If the tendency to change is internal, it may be checked,
  - (b) If it is due to surroundings, these may not change ;
- 6. Objection : No lizards are found before the Permian period ; those of that period are like the present kind, and have no older species from which they are descended ;
- 7. Answer : The geological record is imperfect ;
  - (a) It is destroyed by processes of denudation,
  - (b) It is obliterated by processes of metamorphosis,
    - (a) Tracks of great birds are found in strata along the Connecticut, but not a vestige of the birds is found,
    - (b) Sands often preserve a mould where all the



solid matter has been destroyed by percolation ;

8. Objection : Evolution implies a complete series from protoplasm to the highest animal ; no such completeness exists ; there is no link between mammal and bird, between bird and reptile, between ruminants and pigs, and so on ; absolute breaks occur all along the line ;
9. Answer : These gaps may not always have existed ; there is continually increasing evidence to show that they did not ;
  - (a) Cuvier discovered what seemed a link between pigs and ruminants,
  - (b) Cuvier discovered an apparent link between animals as different as the horse and the rhinoceros and the tapir,
    - (a) The *Hesperornis*, lately discovered, differs from all existing birds, and has marked peculiarities of the reptile,
      - (1) It has teeth,
    - (b) The *Ichthyornis* differs from all other birds in like respect, and in vertebræ bones,
    - (c) The *Archæopteryx* has marked elements of the bird and the tail of the reptile, and the bones in some other respects more like the reptile than the bird,
  - (c) These may have been intercalary types, between what led back to reptiles and what led forward to birds,
  - (d) The *Ornithoscelida* were probably in the linear series,
    - (a) Their limbs conform to those of the ostrich,
    - (b) The sacrum resembles that of birds,
    - (c) The pelvis is very like that of birds,
  - (e) If the *Compsognathus* had had feathers, it might have been classed as reptilian bird or avian reptile,

- (f) Possibly this is the animal type whose tracks are found along the Connecticut ;
- 10. These intercalary forms indicate how birds might have developed indirectly from reptiles, if there is other positive evidence of evolution ;
- 11. The probability is strengthened, by a study of the Pterosauria ;
  - (a) Bones contain air cavities,
  - (b) Teeth are absent,
  - (c) Wings are wholly unlike those of birds, yet made for flight ;
- 12. Question : Is the evidence of the evolution of animals so cogent as to make it in the highest degree doubtful that evolution did not take place ?
  - (a) Such evidence has been constantly increasing,
  - (b) Such evidence must be sought under proper physical conditions,
  - (c) The history of the horse affords the most nearly perfect evidence,
    - (a) The horse at present is the most perfect of quadrupeds,
      - (1) It is beautifully and skillfully proportioned,
      - (2) Its parts are perfectly adjusted to its duties,
      - (3) It can do the greatest amount of work on the least fuel,
    - (b) The horse deviates most widely from other mammals,
      - (1) In the number and conformation of the bones of the legs,
      - (2) In the number and conformation of digits,
      - (3) In the number and conformation of teeth,
    - (c) The theory of evolution implies that the horse is derived from a type of quadruped having,

- (1) Bones of forearm and leg separate and complete,
- (2) Five digits on each foot,
- (3) Forty-four teeth of simple structure,
- (d) The history of the horse shows this development, the specimens found between the Eocene Period and the recent period showing all the stages,
  - (1) These specimens are from different parts of Europe and America,
  - (2) A complete set can be seen in the Museum of Yale College,
  - (3) M. Lartet has arrived at this conclusion, independently, from the same data ;
- 13. An inductive hypothesis is said to be demonstrated, if the facts are shown to be in entire accordance with it; the facts in the history of the horse are in accordance with the evolution (an inductive) hypothesis :
- C. The evolution hypothesis is demonstrated.
  - 14. The evolution theory is on the same logical basis, as the Copernican theory of the heavens ; the observed facts coincide with theoretical requirements ;
  - 15. The only escape is the theory of special creations at different periods, and there can be no scientific evidence of this ;
  - 16. The question is only as to the method of evolution, not as to the time required ; that is to be settled by geologists and physicists.

### C.

#### CONCLUSION.

- 1. The purpose of the argument was to set forth, —
  - (a) The principles upon which all hypotheses respecting the history of nature must be judged,
  - (b) The nature and cogency of evidence to be obtained upon it ;
- 2. I have considered the audience as students, desiring truth ;

3. I shall be satisfied if you now see that this matter requires the keen attention of trained intellect, and the patience of the accurate observer ;
4. Your attention and courtesy have made me forget that I am a stranger, and are considered the greatest compliment that can be accorded to one in my position.



## PROPOSITIONS FOR ARGUMENT OR DEBATE.

1. Self-made men are the strongest men.
2. Temperance is a duty of the young.
3. The lecture system of instruction is preferable to the text-book system.
4. The age demands industrial education.
5. Political parties are a necessity to free government.
6. Electricity will supersede all ordinary motors.
7. It is the duty of the public to educate the masses.
8. Scientific education is preferable to classical education.
9. The average age of man is increasing.
10. Current literature is more profitable reading than classic literature.
11. The West will eventually govern the United States.
12. Senators should be elected by popular vote.
13. Postmasters should be elected by popular vote.
14. The Norsemen discovered America.
15. Vivisection is justifiable.
16. The German university methods should be adopted in America.
17. A more restricted immigration would be to the best interests of the United States.
18. Canada should be annexed to the United States.
19. Hard work is the secret of success.
20. Agriculture is a desirable occupation.
21. An independent business is preferable to a salaried position.
22. Chicago will be the national capital.
23. Public life is attended with great danger to moral character.
24. Physiology should be taught in the common schools.
25. The common schools should teach patriotism.
26. Education is a good business investment.
27. Good manners are a profitable possession.
28. Richard III. was a greater villain than Iago.

29. A soft answer turneth away wrath.
30. National holidays are a national blessing.
31. Freedom of the press is necessary in a free country.
32. America needs a national "Westminster Abbey."
33. Monopolies are an evil to be suppressed by law.
34. Political rings are opposed to pure government.
35. Women should have the right to vote.
36. Public libraries should be supported at public expense.
37. Law is a better profession than medicine.
38. Traveling is the best means of education.
39. Human friendships are better than the friendship of books.
40. War is always inexpedient.
41. Arbitration is the best method of settling disputes.
42. Strikes are justifiable.
43. Strikes have been advantageous to the strikers.
44. The "Coxey movement" was justifiable.
45. The government should own and operate the telegraph.
46. The government should own and operate the railroads.
47. With what measure ye mete, it shall be measured to you again.
48. Women should receive the same wages as men for the same labor.
49. Coëducation is preferable to separate education of men and women.
50. Language study is more difficult than science study.
51. The newspaper is the great popular educator.
52. The practical man is the most useful man.
53. Oratory is declining.
54. Mixed husbandry is more profitable than special farming.
55. Manual training has an intellectual value.
56. The Indians have been treated unjustly by the United States Government.
57. Lincoln was a greater statesman than Washington.
58. English literature excels all others.
59. There will be no more wars.
60. World's Fairs are a great means of education.
61. The classic theatre is a valuable means of education.

62. Football as played at present is too dangerous to be encouraged.
63. College sports are a benefit to both students and colleges.
64. Self-government is the best government for students.
65. Moses was a great leader.
66. The aggregate moral influence of woman is greater than that of man.
67. Free trade has been a benefit to Great Britain.
68. High schools are to be maintained at public expense.
69. Denominational schools and colleges are a necessity.
70. Greater uniformity in English orthography should be effected.
71. The English government is responsible for Irish discontent.
72. Mary Stuart was unjustly executed.
73. The Isthmus Canal should be owned by America.
74. Candidates for office should pay campaign expenses.
75. The inventor has a right to his invention.
76. Cremation will supersede earth-burial.
77. College sports are a detriment to good scholarship.
78. Adversity strengthens character.
79. The study of poetry purifies and elevates the mind.
80. Macaulay is an untrustworthy historian.
81. A city is a better place for a college, than a village or the country.
82. Charles Dickens's novels effected reforms.
83. Dancing is a proper social amusement.
84. Early marriages should be encouraged.
85. Enthusiasm is essential to success.
86. A classical education is the best preparation for a literary career.
87. Agriculture is necessary to civilization.
88. The character of the Pilgrims was like that of the Puritans.
89. Refined surroundings develop refined character.
90. Christian morality will finally prevail.
91. A protective tariff is a national benefit.
92. Improved labor-saving machinery has been an advantage to the laborer.

93. The principle of prohibition is correct.
94. Prohibitory laws are just and expedient.
95. The spoils system is an evil to be abolished.
96. Appointments to government places should be on examination.
97. State institutions for higher education should be combined.
98. The American scholars should control American politics.
99. The reading of standard novels is profitable.
100. The study of the sciences is a means of culture and refinement.
101. The execution of John Brown was just.
102. The banishment of the Acadians was unjust.
103. Goldsmith's poetry was a blessing to literature.
104. Education is the conservator of liberty.
105. Climate influences character.
106. Capital punishment should be abolished.
107. Poetry is a national power.
108. Action is the test of character.
109. Sincerity is essential to success.
110. Employment is essential to intellectual health.
111. The study of the natural sciences has a moral influence.
112. Loyalty to principle is an advantage to the politician.
113. Satire is incompatible with poetry.
114. James McPherson wrote the poems which he attributed to Ossian.
115. Bacon wrote the plays attributed to Shakespeare.
116. It is policy to be polite.
117. Prejudice is a hindrance to progress.
118. The power of imagination is necessary to the discoverer.
119. Hamlet was insane.
120. The successful orator must be a man of upright character.
121. Controversy contributes to progress.
122. Good manners are necessary to business success.
123. The development of a national literature indicates national progress.
124. Puritan excellencies predominated over Puritan eccentricities.



125. Capital and labor will always be at war.
126. Beauty has practical uses.
127. Brutus *was* an honorable man.
128. Luxuries become necessities.
129. Limited suffrage is better than unrestricted suffrage.
130. Eight hours should legally constitute a day's work.
131. Free trade is necessary to general prosperity.
132. Church property should be exempt from taxation.
133. Military tactics should be taught in the public schools.
134. Communism is opposed to the best interests of society.
135. Common school education should be compulsory.
136. A young man should choose a profession before taking a college course.
137. Cardinal Wolsey's ambition was his ruin.
138. Macbeth's ambition, not his wife, was his ruin.
139. The practice of economy is a universal duty.
140. There should be an international copyright law.
141. The reading of Byron's poetry tends to immorality.
142. He who would control others, must be able to control himself.
143. Newspapers are more powerful than armies.
144. Homer has exerted a greater influence than Alexander.
145. *Uncle Tom's Cabin* did much toward abolishing slavery.
146. Education is a greater power in the temperance cause, than is legislation.
147. Centralization of power is dangerous to free government.
148. The election of studies is preferable to following a prescribed course.
149. Self-preservation is always a first duty.
150. A pure ballot is necessary to pure government.
151. All labor is dignified.
152. The licensing of lotteries by the State should be prohibited by law.
153. Delegates and representatives should obey the instructions of their constituencies.
154. The endowing of Experiment Stations was a wise movement.

155. Tenure of office should be during competence and good behavior.
156. Coöperation of capital and labor is desirable and practicable.
157. Partisan control is detrimental to educational institutions.
158. A meat diet is preferable to a vegetable diet.
159. A national income tax is a proper source of revenue.
160. Aerial navigation will be made practicable.
161. The study of English classics affords as much culture as the study of ancient classics.
162. The present condition of the earth is the result of evolution.
163. The Chinese must be kept out of America.
164. High license will do more to regulate the liquor traffic than prohibition.
165. Irrigation systems should be owned by *bona fide* irrigators.
166. The teaching profession is underpaid.
167. The world is growing better.
168. The United States should keep a larger standing army.
169. Diplomatic and consular service requires special training.
170. The spread of Christianity is aided by a multiplicity of sects.
171. The decision of a judge is more likely to be correct than the verdict of a jury.
172. A majority vote of a jury should convict or acquit.
173. More money is spent for luxuries than for necessities.
174. Laws prohibiting the selling of tobacco to boys, are just and expedient.
175. Races are a necessary part of agricultural fairs.
176. The work of the Salvation Army is to be commended.
177. More money has been spent than made, in California mining.
178. The accumulation of wealth is a test of intellectual ability.
179. The habits of modern society tend to physical degeneration.
180. More rigorous bankruptcy laws are needed.
181. The American coast defense is insufficient.

182. The modern newspaper is responsible for public opinion.
183. The American Navy should be increased.
184. Charles Dickens's characters are caricatures..
185. The novel is deteriorating in real worth.
186. The Silver question is of more importance than the Tariff question.
187. The college course should be shortened.
188. A jury of six or eight is as trustworthy as a jury of twelve.
189. Public funds should not be appropriated to sectarian schools.
190. Wealth accumulates as men decay.
191. Lincoln's plan of reconstruction was preferable to the congressional plan.
192. Capital punishment is preferable to life imprisonment.
193. The President is justifiable in using troops to quell riots.
194. Public libraries, museums and art galleries, should be open on Sunday.
195. The ratio of silver and gold coin should be reached by international agreement.
196. The Norwegian system of liquor selling would be impracticable in the United States.
197. Electric wires in cities should be underground.
198. Underground transit is preferable to elevated railways.
199. The study of formal grammar is unnecessary to English scholarship.
200. Woman suffrage has had a salutary influence on politics.
201. Daily food exerts an intellectual and moral influence.
202. Uniform text-books for the public schools should be prescribed by law.
203. The city or district school should furnish pupils text-books.
204. The bicycle is preferable to the horse as a means of locomotion.
205. Intensive study is preferable to extensive study.
206. The practice of appointing literary men to diplomatic positions is a wise one.

## GLOSSARY.

### ***A Fortiori.***

For a still stronger reason. A kind of argument which concludes either (a) that something does not take place, because the causes which alone could bring it to pass, operate still more strongly in another case without producing that effect ; or (b) that something does take place, because causes much weaker than those which operate to bring it about, are effective in another case.

### **Agreement.**

A method of induction in which it is argued that if two or more instances of a phenomenon have only one other circumstance in common, that circumstance may be regarded as its cause (or effect), or as related with it through some fact of causation.

### **Analogy.**

An argument from agreement, likeness, or proportion between the relations of things to one another ; hence, often agreement or likeness of things themselves. It strictly denotes only a partial similarity, as in some special circumstances or effects, predicable of two or more things in other respects essentially different. In logic, analogy is a form of reasoning in which from the similarity of two or more things in certain particulars, their similarity in other particulars is inferred.

### **Antecedent Probability.**

A likelihood from what has gone before. The probability of a supposition or hypothesis drawn from reasoning or analogy previous to any observation or evidence which is considered as giving it a *posteriori* probability. (*See a priori.*)

### ***A Posteriori.***

From what comes after ; from an effect ; from the latter or subsequent. In logic, from a consequent to its antecedent, or from an effect to its cause. A kind of reasoning which



follows this order. From experience, empirical ; opposed to *a priori*.

*A Priori.*

From the former, that which precedes ; from an antecedent to a consequent, from a condition to the conditioned, from cause to effect ; applied to cognitions which, though they may come in experience, have their origin in the nature of the mind, and are independent of experience.

**Argument.**

Any fact, truth, principle, or circumstance used in reasoning, and tending to produce belief concerning matter in doubt. A premise, or premises set forth to prove an assumption or conclusion.

**Argumentation.**

The process of so using facts, truths, principles or statements, as either to establish or overthrow a proposition.

*Argumentum ad Captandam.*

An appeal to vulgar prejudice, or a resort to gross flattery ; an attempt to "catch the crowd."

*Argumentum ad Hominem.*

A special mode of refutation by showing an opponent's inconsistency, or by showing that he is precluded from the benefit of a principle to which he appeals. An argument drawn from premises which, whether true or false, ought to be admitted by the person to whom they are addressed, either on account of his peculiar beliefs or experience, or because they are necessary to justify his conduct, or are otherwise conducive to his interest.

*Argumentum ad Ignorantiam.*

An argument founded on the ignorance of one's adversaries.

*Argumentum ad Misericordiam.*

An appeal for sympathy ; an attempt to awaken the pity of an audience.

*Argumentum ad Verecundiam.*

An appeal to popular esteem, reverence, or affection for

a great man ; an argument from the opinions of men whose views are commonly accepted as authoritative.

**Argument from Antecedent Probability.**

Assuming the truth of a proposition and showing why it might be true. (See antecedent probability, and *a priori*.)

**Argument from Example.**

Reasoning that what is true in certain known cases, will be true in similar cases ; citing instances of the operation of a law or principle, to establish the law or principle. (See Analogy.)

**Argument from Sign.**

Putting forward one fact, event, circumstance or condition as a reason for believing in the existence of another.

**Argument from Silence.**

Inferring the non-existence of anything from its not being mentioned when it would naturally be mentioned if it existed.

**Assumption.**

A proposition the truth of which is taken for granted, from common experience, or without proof.

**Authority.**

The opinion of a competent person on a doubtful matter ; testimony as to matters of opinion. That to which, or one to whom an appeal may be made in support of any opinion, action or course of conduct.

**Belief.**

Assent to a proposition admitting any degree of strength from slight probability to full certainty. A conviction of the truth of a given proposition or an alleged fact, resting upon grounds insufficient to constitute positive knowledge.

**Burden of Proof.**

The obligation resting upon one of the parties to an action to establish an alleged fact by proof under penalty of having judgment given against him, according to the presumption recognized by the law of evidence in case he adduces no proof.

**Chain of Reasoning.**

A course of reasoning in which the conclusion of one syllogism is taken for a premise of another, and this process is continued to a final conclusion.

**Chronological Sequence.**

The succession of events according to the order of time.

**Circumstantial Evidence.**

All evidence outside of and beyond human testimony.

**Complete Method.**

A method of reasoning combining alternately deduction and induction. It has three steps ;—direct induction, deduction, or ratiocination, and verification.

**Conclusion.**

(1) A proposition proved ; a proposition the truth of which is apparent from the relation of the premises. (2) The closing part of an argumentative discourse.

**Conclusive Presumption.**

A rule of law determining the amount and kind of evidence demanded in support of certain kinds of propositions, and rendering them incontrovertible.

**Concomitant Variation.**

A method of induction from increase or diminution of an effect with increased or diminished intensity of cause.

**Concurrent Testimony.**

The like testimony of two or more witnesses of the same matter.

**Conviction.**

(1) The process of compelling the acceptance of a truth.  
(2) Strong belief on the ground of satisfactory reasons or evidence ; a fixed or firm belief.

**Corollary.**

That which follows over and above the special truth proved or demonstrated in a proposition. A proposition incidentally proved in proving another ; an immediate or easily drawn consequence ; hence, any inference similarly drawn.

**Cumulative Argument.**

A resultant arising from a combination of sign arguments.

**Deduction.**

The inference of a less general, or a particular truth, from a more general one ; derivation as a result from a known principle ; the result itself, as so inferred : That mode of investigation by which the law of an effect is ascertained from the consideration of the laws of the different tendencies of which it is the joint result.

**Definition.**

The explanation of the meaning of a term ; the enumeration and distinguishing of essential attributes ; stating the signification of a word, or expression, or the essential properties of a thing.

**Difference.**

A method of induction based on the principle that an antecedent, present when a phenomenon follows, and absent when it does not follow, is the cause of the phenomenon.

**Dilemma.**

An argument presenting an antagonist two or more alternatives equally against him, whichever he chooses.

**Direct Argument.**

Proof applied immediately to the establishing of a proposition.

**Disbelief.**

The state of mind of one convinced of the incorrectness of a statement or opinion. The conviction that a proposition for which credence is demanded, is not true.

**Doubt.**

Hesitation between two or more inconsistent opinions. Uncertainty with regard to the truth of a given assertion ; suspense of judgment arising from defect of evidence or of inclination ; an unsettled state of opinion ; indecision of belief.

**Empirical Proof.**

Proof derived from human experience.



**Empiric Fact.**

A phenomenon always appearing with another although no causal connection is known.

**Empirical Law.**

A law of nature ascertained purely by induction from certain observations or experiments, and having no other guarantee for its truth.

**Enthymeme.**

A syllogism with one premise suppressed.

**Evidence.**

Any means by which alleged matter of fact under investigation is established or disproved. The material of proof ; the means by which the existence or non-existence, the truth or falsehood, of an alleged fact is ascertained or made evident ; testimony ; facts upon which reasoning from cause to effect is based ; the experiential premises of a proof.

**— Circumstantial.**

All evidence except that of witnesses.

**— Demonstrative.**

Evidence which must necessarily produce conviction. Proofs are demonstrative when the certainty which they necessitate is absolute and complete ; when the opposite alternative involves a contradiction.

**— Direct.**

That which goes straight to the very point in question ; that which if believed, proves the point without the aid of inference or reasoning.

**— Indirect.**

That which goes expressly to prove other facts only, from which it is proposed to infer what is the fact on the point in question.

**— Intuitive.**

What is already in the mind, without any process of reasoning. Primitive beliefs.

**— Moral.**

The evidence of an irresistibly probable argument.

**Evidence ; Positive.**

Testimony to having witnessed an act or event, as distinguished from negative evidence or the testimony of a witness who was present and observant, that such an act or event did not take place.

**— Presumptive.**

Evidence sufficient if not contradicted.

**— Testimonial.**

The sworn statements of witnesses.

**Excitation.**

Stimulating the feeling by awakening a new affection, or by strengthening one already existing.

**Exordium.**

Introduction ; that part of a discourse which brings into relation the speaker, the subject and the occasion.

**Experiment.**

A method of induction by varying each circumstance in succession, the others remaining constant.

**Expert.**

One who testifies as to matters requiring special knowledge, or as to the interpretation of facts. One who by virtue of special acquired knowledge or experience on a subject, presumably not within the knowledge of men generally, may testify in a court of justice to matters of opinion thereon, as distinguished from ordinary witnesses who can in general, testify only to facts.

**Explication.**

The development of a term or theme by giving the attributes.

**Exposition.**

The development of a term or theme by means of its essential attributes ; the making clear and intelligible of any subject, idea or doctrine ; detailed explanation.

**Fact.**

A real state of things, as distinguished from opinion or be-

lief ; that in the real world, agreement or disagreement with which, makes a proposition true or false. In law an actual or alleged physical or mental event or existence, as distinguished from a legal effect or consequence.

#### **Fallacy.**

A fault or error in reasoning ; a false syllogism ; an invalid argumentation. "A piece of false reasoning in the narrowest sense ; either an invalid immediate inference or an invalid syllogism ; a piece of false reasoning in the broader sense, whereby from real facts a false conclusion is inferred. A false belief whether due to correct reasoning from false premises, reasons or sources, or to incorrect reasoning from true ones. Any mental confusion whatever."

#### **Hypothesis.**

A provisional conclusion used in accounting for related facts. Any supposition which we make (either without actual evidence or on evidence avowedly insufficient), in order to endeavor to deduce from it conclusions in accordance with facts which are known to be real ; under the idea that if the conclusions to which the hypothesis leads are known truths, the hypothesis either must be true, or at least is likely to be true.

#### **Indirect Argument.**

Proof applied to the establishing of a proposition by the overthrow of a contradictory proposition.

#### **Induction.**

Reasoning from a part to a whole, or from particulars to generals ; the process of drawing general conclusions from particular cases ; the inference from the character of a sample to that of the whole lot sampled.

#### **Inference.**

A proposition perceived to be true from its known connection with some fact ; passing from one proposition to another ; the formation of a belief or opinion, not as to matters directly observed, but as constrained by observations made of other matters, or by beliefs already adopted ; the system

of propositions or judgments connected together by such an act in syllogism.

**Innuendo.**

An oblique hint intended for the injury of some person or thing.

**Joint Method.**

An induction from a union of the methods of agreement and difference.

**Major Premise.**

A general truth used as the ground for believing that some thing else is true.

**Major Term.**

The predicate of the conclusion in a syllogism ; usually the most inclusive of the three terms.

**Maxim.**

A proposition expressing a belief gained in common human experience.

**Middle Term.**

That term with which both the major term and the minor term are compared in the premises of a syllogism.

**Minor Premise.**

A proposition connecting some special truth with the general truth of the major premise of a syllogism.

**Minor Term.**

The subject of the conclusion in a syllogism ; usually the least inclusive term.

**Moral Argument.**

Such argument as would lead to conviction without demonstration ; opposed to demonstrative argument.

**Moral Certainty.**

Such certainty as a reasonable person would act upon.

**Motive.**

Whatever occasions or induces voluntary human action ; a determining impulse ; a desire for something ; a contemplated gratification as final cause for action.



*Non causa pro causa.*

Assuming without sufficient grounds that one thing is the cause of another.

*Non Sequitur.*

The conclusion does not necessarily follow from the premises ; an argument so loose that it has little or no cogency ; the fallacy of the consequent.

*Onus Probandi.*

Burden of proof ; the necessity laid upon him who affirms, to prove ; the task of proving what has been alleged.

*Parity of Reasoning.*

Analogy ; similarity in a course of reasoning ; arguing a case by a course of reasoning by which a similar case has already been established.

*Partition.*

The separation of the contents of a proposition into its parts for confirmation or refutation.

*Peroration.*

The closing part of a discourse, used to enforce arguments, recapitulate, or point a moral.

*Persuasion.*

Appealing to the will through the feelings, in order to incite action ; the direct or indirect presentation of motives for an act, or course of action.

*Petitio Principii.*

Begging the question ; assuming in an argument, the very thing which is to be proved ; the assumption of a premise which no person holding antagonistic views will admit.

*Plausibility.*

Probability apparently approaching positive certainty ; a specious or superficial appearance of being right or worthy of acceptance, approval or applause.

*Post hoc.*

The fallacy of assuming that because one event or circumstance follows another, it is the effect of that other.

**Positive Argument.**

The sole effect of a cause, the only condition of a conclusion.

**Postulate.**

A proposition necessarily demanded as a basis of argument.

**Premise.**

A proposition put forward as proof of another proposition ; part of a syllogism.

**Presumption.**

Accepting the truth of a proposition in advance of proofs, or in the absence of proofs ; hypothetical or inductive inference.

**Probability.**

Quantity of belief or information concerning an uncertain event or circumstance ; that state of a case or question of fact, which results from superior evidence or preponderance of argument on one side, inclining the mind to receive that as the truth, but leaving room for doubt.

**Probable Argument.**

Whatever comes little short of absolute certainty.

**Progressive Tendency.**

Growth or increase of probability depending on increase of cause or removal of hindrance.

**Proof.**

Any fact, principle or argument used in reasoning ; any effort, act, or operation made for the purpose of ascertaining any truth or fact ; evidence and argumentation that put the conclusion beyond doubt.

— **Intuitive.**

Proof given by the mind itself acting under the necessary laws of thought.

**Recapitulation.**

A summary or concise statement by heads, of the facts, principles or arguments in a discourse.

***Reductio ad absurdum.***

“Reducing to the absurd.” Substituting a new minor premise in a syllogism and thence inferring an absurd conclusion, showing that the major includes too much ; an indirect demonstration.

**Refutation.**

Disproving a proposition, or establishing its contradictory proposition, or one inconsistent.

**Residues.**

A method of induction by subtracting the effects of known causes, leaving the remaining effects to remaining antecedents.

**Sign.**

Anything which serves to manifest, stand for, or call up the idea of another thing to the mind of the person perceiving the sign ; evidence of something past, present or future ; an indication ; anything suggesting an idea or assisting an inference ; hence the logical reason for accepting or rejecting the contents of a proposition.

**Sophism.**

A false argumentation devised to exercise one's ingenuity, or for the purpose of deceiving ; sometimes a logically false argumentation ; a fallacy.

**Sophistry.**

Fallacious reasoning ; reasoning sound in appearance only ; reasoning deceptive from intuition or passion ; argument for exercise merely ; trickery ; craft in argument.

**Syllogism.**

A formal argument in which from two propositions, called premises, a third, called the conclusion, is inferred.

**Term.**

A name ; specially the subject or predicate of a proposition.

**Testimony.**

A statement of what a witness has observed, used as an argument.

**Thesis.**

A proposition put forward to be supported by argument ; an argumentative composition embodying the results of original research.

**Truth.**

Conformity of knowledge or statement to the thing known or stated.

**Unity.**

Such an arrangement of details as will make their sum seem a single thing.

**Waiving a Point.**

Temporarily delaying the discussion of any specified matter.

**Witness.**

One who gives testimony on the trial of a cause ; one who appears before a court, judge, or other officer, and is examined under oath or affirmation ; one whose testimony is offered or desired ; one in whose presence or under whose observation a fact occurred.





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